



TOWN COUNCIL – AGENDA REQUEST FORM

THIS FORM WILL BECOME PART OF THE BACKGROUND INFORMATION USED BY THE COUNCIL AND PUBLIC

Please submit Agenda Request Form, **including back up information**, 8 days prior to the requested meeting date. **Public Hearing requests must be submitted 20 days prior to requested meeting date to meet publication deadlines** (exceptions may be authorized by the Town Manager, Chairman/Vice Chair).

MEETING INFORMATION

Date Submitted: October 14, 2016
 Submitted by: Tim Thompson, AICP
 Department: Community Development
 Speakers: Tim Thompson, AICP, CD Director

Date of Meeting: October 27, 2016
 Time Required: 15 minutes
 Background Info. Supplied: Yes: No:

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/Retirement:	<input type="checkbox"/>
Public Hearing:	<input type="checkbox"/>	Old Business:	<input type="checkbox"/>
New Business:	<input type="checkbox"/>	Consent Agenda:	<input checked="" type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

TITLE OF ITEM

Consideration of Proposed Zoning Ordinance Amendments [Final Reading]

DESCRIPTION OF ITEM

Zoning Ordinance Amendments regarding Accessory Dwelling Units & Signs (Sections 2.02.1 and 17)

REFERENCE (IF KNOWN)

RSA:	675:2	Warrant Article:	
Charter Article:	5	Town Meeting:	
Other:		N/A	

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input type="checkbox"/>

CONTACT INFORMATION

Name:	<u>Tim Thompson, AICP</u>	Address	<u>6 Baboosic Lake Road</u>
Phone Number	<u>424-3531</u>	Email Address	<u>tthompson@merrimacknh.gov</u>

APPROVAL

Town Manager: Yes No: Chair/Vice Chair: Yes No:

Hold for Meeting Date: _____



TOWN COUNCIL – AGENDA REQUEST FORM

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MEETING INFORMATION

Date Submitted: _____ Date of Meeting: **9/22 (first reading), 10/13 Public Hearing**

Submitted by: Tim Thompson, AICP Time Required: 10 for first read, 25 for public hearing

Department: Community Development Background Info. Supplied: Yes No

Speakers: Tim Thompson, AICP, CD Director (note: unable to attend 1st read, will be available for public hearing)

CATEGORY OF BUSINESS (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Appointment:	<input type="checkbox"/>	Recognition/Resignation/Retirement:	<input type="checkbox"/>
Public Hearing:	<input type="checkbox"/>	Old Business:	<input type="checkbox"/>
New Business:	<input checked="" type="checkbox"/>	Consent Agenda:	<input type="checkbox"/>
Nonpublic:	<input type="checkbox"/>	Other:	<input type="checkbox"/>

TITLE OF ITEM

Consideration of Proposed Zoning Ordinance Amendments

DESCRIPTION OF ITEM

Zoning Ordinance Amendments regarding Accessory Dwelling Units & Signs (Sections 2.02.1 and 17)

REFERENCE (IF KNOWN)

RSA:	675:2	Warrant Article:
Charter Article:	5	Town Meeting:
Other:		N/A:

EQUIPMENT REQUIRED (PLEASE PLACE AN "X" IN THE APPROPRIATE BOX)

Projector:	<input type="checkbox"/>	Grant Requirements:	<input type="checkbox"/>
Easel:	<input type="checkbox"/>	Joint Meeting:	<input type="checkbox"/>
Special Seating:	<input type="checkbox"/>	Other:	<input type="checkbox"/>
Laptop:	<input type="checkbox"/>	None:	<input checked="" type="checkbox"/>

CONTACT INFORMATION

Name:	Tim Thompson, AICP	Address:	6 Baboosic Lake Road
Phone Number:	424-3531	Email Address:	tthompson@merrimacknh.gov

APPROVAL

Town Manager: Yes No Chair/Vice Chair: Yes No

Hold for Meeting Date:



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MEMORANDUM

Date: August 22, 2016
To: Town Council
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **Zoning Ordinance Amendments regarding Accessory Dwelling Units and Signs**

Background: Over the course of several months, the Community Development Department has been developing Zoning Ordinance amendments related to the sections pertaining to Accessory Dwelling Units and Signs. Each topic area is summarized below:

Accessory Dwelling Units

This process actually began at a joint meeting of the Planning Board and Zoning Board in December 2014, where the topic was raised about amending the Zoning Ordinance regarding how the Town deals with accessory dwelling units (ADU), which are commonly referred to as "in-law apartments." At the time, the ZBA was only interested in amending the process of how ADU's are approved, whereas the Staff and Planning Board were interested in a more comprehensive look at the topic, in order to implement one of the 2013 Master Plan recommendations.

As staff set out to put together amendments to the ordinance, the State Legislature began the process on a proposed bill that would change the way the State allows municipalities to deal with ADUs. In early 2016, the Legislature passed, and the Governor has signed a bill that sets forth new statutory requirements for ADUs. The new law becomes effective on June 1, 2017, but the Planning Board has chosen to address the ordinance language now, particularly since it implements one of the Master Plan recommendations, with which the new law correlates nicely, in that municipalities will no longer be able to restrict occupancy of ADUs to family members only.

The proposed amendments to the ordinance would set forth 2 different processes for ADUs. The first (and most common) would be to change "attached" ADU approvals from a Special Exception requiring ZBA approval to a permitted use, with criteria that would be administered by the Community Development Department and Building Department. The second process would be to allow for "detached" ADUs to be permitted by Conditional Use Permit by the Planning Board. It is Planning Board and staff's belief that these proposed amendments address the issue the ZBA was desirous of "fixing" (the process required for Special Exceptions), and the Master Plan/State Law goals of assisting with meeting the needs of a diversified housing stock to address a limited part of the workforce housing needs for the community.

Signs

A June 2015 U.S. Supreme Court decision in *Reed v. Town of Gilbert* regarding content-based speech restrictions established that sign codes cannot make distinctions based on the message of the speech. In this case, the Town of Gilbert, AZ sign code placed stricter limits on temporary events' signs but more freely allowed ideological and political signs, despite the fact that all three sign types have the

same effect on traffic safety and community aesthetics. Therefore, the code failed the narrow tailoring requirement of strict scrutiny judicial standard applied by the Supreme Court.

As a result of Reed, a sign code that makes any distinctions based on the message of the speech is content based. It has been widely recommended nationwide that municipalities review sign codes carefully, with an eye toward whether the code is truly content neutral.

A review of the current Merrimack sign requirements in the Zoning Ordinance indicated that there are certain sections of the ordinance that need to be amended in light of the recent case law, particularly within Section 17.05 – Permit Not Required, where several content-based sign types are listed. The proposed amendments to the ordinance seek to remove any content bias and to simplify the process of regulating temporary signs, in order to protect the town from litigation resulting from the decision in the Reed v. Gilbert case.

Summary:

The Planning Board unanimously supports the adoption of the proposed amendments (summarized in the attached memo to the Planning Board dated July 9, 2016) by the Town Council.

The attachments also include the specific recommended ordinance revisions, as well as back-up materials and reference documents that are provided to assist the Council in further understanding the rationale and purposes of the proposed amendments. While I am not likely able to be in attendance for the first reading of the amendments (if placed on the 9/8 Agenda), I will be present for the public hearing (on either 9/22 or a later date) to answer any questions the Council may have.

cc: File
Eileen Cabanel, Town Manager
Robert Best, Planning Board Chair
Community Development Staff
Building Division Staff
Zoning Board of Adjustment



Town of Merrimack, New Hampshire

Community Development Department

6 Baboosic Lake Road

Town Hall - Lower level - East Wing

Planning - Zoning - Economic Development - Conservation

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MEMORANDUM

Date: July 6, 2016
To: Robert Best, Chairman, & Members, Planning Board
From: Timothy J. Thompson, AICP, Community Development Director
Subject: **Public Hearing: Zoning Ordinance Amendments regarding Accessory Dwelling Units & Signs**

Background: As was discussed at the April 19, 2016 Planning Board meeting, please find this memo as a summary of the proposed amendments to the Zoning Ordinance covering Accessory Dwelling Units (ADUs) and Signs. Copies of the staff memos from that meeting, outlining the proposed amendments and background, are attached, as is the proposed ordinance language.

Since the workshop meeting, staff has discussed/reviewed the proposed amendments with the Town's Legal Counsel, and we offer the following:

ADUs: The Board and staff had the question of how to handle the previously required (and now recorded) declarations of covenants that ADU applicants have been required to provide as part of the ZBA's approval process for Special Exceptions under the current ordinance language. Legal Counsel stated that the new state law concerning ADUs applies retroactively, *so any previously filed restrictive covenants are no longer binding*. To hold otherwise would open the Town up to a possible takings claim. So, in short, the Town cannot (and will not) enforce the previously recorded restrictive covenants, and any previously approved ADU can now be occupied in accordance with the new state law (meaning occupancy cannot be restricted to family members only, but that the property owner must live in either the primary dwelling or the ADU).

Signs: Counsel has reviewed the proposed zoning amendments concerning signs and believes that it comports with the *Reed* case. He states further that the focus of any sign regulation really needs to be on those aspects that have nothing to do with content (such as dimensions, height, colors, material etc.). Consistent with *Reed*, these proposed amendments do not treat commercial speech more favorably than non-commercial speech, etc. *so it passes muster*. On that note, commercial speech is afforded less protection than non-commercial speech, such as political speech, so to the extent someone attempted to challenge such a distinction the Town would likely be able to satisfy its burden of showing why the signs are treated differently.

Summary of Proposed Amendments:

- Amend Section 2.02.1.A (District R - Permitted Uses): Insert new subsection #4 establishing the criteria for attached Accessory Dwelling Units (ADUs) to be permitted, renumber old subsection "4" to be "5";
- Amend Section 2.02.1.B (District R - Permitted Uses, Special Exceptions): Delete subsection #2 in its entirety, renumber remaining subsections;

- Amend Section 2.02.1 (District R - Permitted Uses): Insert new subsection C, Conditional Use Permits, and further to establish the criteria for detached ADU's to be permitted by Conditional Use Permit;
- Amend Section 17 – Insert new subsection - 17.02: establishing a severability clause, renumber remaining subsections;
- Amend renumbered subsection 17.03: Include “flags” in the title and specify that flags of national, state, local or historical significance are not regulated by the ordinance;
- Amend renumbered Section 17.04: add language that clarifies signs containing noncommercial speech are permitted anywhere that advertising or business signs are permitted;
- Amend renumbered Section 17.06: Insert new 17.06.1 to allow for one (1) sign per each residential property, meeting certain criteria, without regard to content;
- Amend Section 17.05 (2-3): Removed in their entirety based on content bias;
- Amend renumbered Section 17.06.2: currently Section 17.05.1 – reworded to remove content bias;
- Amend renumbered Section 17.06.3: currently Section 17.05.4 – added the language “In order to maintain public safety”;
- Amend Section 17.05: Delete subsections 5, 6, 7, 8, 9, 13, 14, 15, 17, 19, 20, 21, 23, & 24 due to content bias;
- Amend renumbered Section 17.06.4: Remove language regarding sign content in current Section 17.05.10;
- Amend renumbered Section 17.06.5: currently Section 17.05.11 – add language “In order to maintain public safety”;
- Amend renumbered Section 17.06.6: currently Section 17.05.12 – remove language regarding sign content;
- Amend renumbered Section 17.06.7: currently Section 17.05.16 – add language “In order to maintain public safety”;
- Amend renumbered Section 17.06.8: currently Section 17.05.18 – no change in the language;
- Amend renumbered Section 17.06.9: currently Section 17.05.22 – Remove language regarding sign content;
- Amend renumbered Section 17.08: currently Section 17.07 – add language to allow for one (1) temporary sign per property without regard to content, meeting current criteria for temporary signs. Language includes allowance for an extra temporary sign for properties that are currently for sale, rent or lease;
- Amend Section 17.08 – Holiday and Special Event Signs: Delete subsection in its entirety due to content bias;
- Amend Section 17.09.1 – add language “For public safety”;
- Amend Section 17.10.2 – remove language regarding sign content;
- Amend Section 17.10.3(e) – remove in its entirety due to content bias, renumber remaining subsections;
- Amend Section 17.10.7 - remove in its entirety due to content bias, renumber remaining subsections;
- Amend Section 17.11 – Remove “Advertising” from the title and language due to content bias;

- Amend various portions of Section 17 – update “premises” to “parcel”.

Required Process for Adoption of Amendments

If the Board wishes to see the amendments adopted, the Board needs to make a recommendation to the Town Council (in accordance with the Charter). From there, the Council will follow their process of 3 readings and a public hearing on the proposed amendments. The final decision on the adoption of any Zoning amendment rests with the Council in accordance with the Town Charter and State law.

Should the Board not want to proceed with the proposed amendments, the Board can either continue the hearing to a future date (to allow staff to make additional changes to the amendments), or vote to deny the changes, which would end the process.

cc: Community Development Staff
Building Division Staff
Zoning Board of Adjustment
File

Packet Contents:

- 1) This Memo, dated July 6, 2016
- 2) Language of Proposed Amendments
- 3) April 7 Staff Memo regarding ADUs (containing SB146 state law language, Master Plan excerpts, and December 2014 Joint Meeting Minutes)
- 4) April 12 Staff Memo regarding Signs (including Reed v. Gilbert Summary and NHMA Do's and Don'ts Guidance)

SECTION 2 - ESTABLISHMENT OF DISTRICTS [revised October 27, 2016]

2.01 - The Town of Merrimack is hereby divided into twelve districts:

- R. Residential District
- C-1. Limited Commercial District
- C-2. General Commercial District
- I-1 Industrial District
- I-2. Industrial District
- I-3. Industrial District
- W. Wetland Conservation District
- F. Flood Hazard Conservation District
- E. Elderly Zoning District
- PRD. Planned Residential District
- A. Aquifer Conservation District
- SP. Shoreland Protection District

The location and boundaries of districts are and shall be as shown on the Zoning Map, the Wetlands Conservation District Map, the Flood Hazard Conservation District Map, the Soils Limitation District Photo Maps, the Elderly Zoning District Map, and the Planned Residential District Map which are hereby declared to be a part of this ordinance.

2.01.1 - Industrial District - Metes and Bounds, I-1, I-2, I-3

- A. From Souhegan River North to Bedford line from Merrimack River to 200 feet west of the railroad tracks and the extension of the industrial zone in the area of the B&M Railroad at the northerly side of the Souhegan River as mapped [including all of Tax Map Parcels 6D-1/75 except for that portion of the parcel south and west of the southwesterly property line of Tax Map Parcel 6D-1/76 and north and west of a line drawn from the southwestern corner of Tax Map Parcel 6D-1/76 to a point at a jog in the southwesterly boundary line of Tax Map Parcel 6D-1/75, said point being approximately 249 feet east of the Front Street Right-of-Way, and all of Tax Map Parcels 6D-1/76, 6E-2/60 and 6E-2/61 but excluding all of Tax Map Parcels 6D-1/69 and 75-4, 6E-1/5, 7, 8, 9, 10, 10-1, 11, 12, 13, 38, 37, 36, 35, 34, 33 and 6E-2/39.
- B. Beginning at a point at the intersection of the westerly right-of-way line of Camp Sargent Road and the southerly right-of-way line of Continental Boulevard; thence
 - 1. Westerly along the said southerly right-of-way line of Continental Boulevard, a distance of seven hundred ninety (790) feet, more or less, to a point at the most westerly corner of Lot 4D/54-4 and the most northerly corner of Lot 3D/3; thence
 - 2. Southeasterly along the southwesterly line of said line of said Lot 4D/54-4 and Lot 4D/53 and the northeasterly line of said Lot 3D/3, a distance of three hundred sixty-nine (369) feet, more or less, to a point on the westerly line of Lot 3D/18; thence

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.01.1 - Industrial District - Metes and Bounds, I-1, I-2, I-3 (continued)

3. Southerly and southwesterly along the northwesterly lot lines of Lots 3D/18, 3D/16, 3D/14, 3D/13, 3D/12, 3D/10, 3D/9, 3D/8, 3D/7, 3D/6-1, 3D/6, 3C/102-2, 3C/102, 3C/102-1, 3C/101, and 3C/100, a distance of two thousand seven hundred ninety-eight (2798) feet, more or less, to a point on the easterly right-of-way line of said Continental Boulevard; thence
4. Southwesterly, crossing said Continental Boulevard, and through Lot 3C/85, a distance of two hundred twenty-one (221) feet, more or less, to a point at the southeasterly corner of Lot 3C/82-1 and the northeasterly corner of Lot 3C/82; thence
5. Northerly along the easterly line of said Lot 3C/82-1, a distance of thirty (30) feet, more or less, to a point at the northeasterly corner of said Lot 3C/82-1; thence
6. Westerly along the northerly line of said Lot 3C/82-1 and Lot 3C/80, a distance of two hundred eleven (211) feet, more or less, to a point at the northwesterly corner of said Lot 3C/80 and on the southeasterly line of Lot 3C/76; thence
7. Northeasterly along the southeasterly line of said Lot 3C/76 and Lot 3C/76-1, a distance of two thousand eight hundred forty-one (2841) feet, more or less, to a point at the center line of Naticook Brook; thence
8. Northeasterly along the said center line of Naticook Brook, a distance of nine hundred twenty-three (923) feet, more or less, to a point on the southerly right-of-way line of Amherst Road; thence
9. Easterly and southeasterly along the said southerly right-of-way line of Amherst Road, a distance of one thousand twenty-two (1022) feet, more or less, to the point of beginning.

Shown on a plan entitled Town of Merrimack Official Zoning Map Amendment, Industrial District "C", Continental Boulevard, Merrimack, N.H., Scale 1" = 200' plus or minus, Adopted May, 1995.

- C. The premises bounded on the south by the northerly line of Pine Wood Acres, so-called, Reeds Ferry; on the east by the Merrimack River; on the north by the southerly line of the New England Power Company right of way, (which southerly line is located eighty-three and 5/10 [83.5] feet southerly of, and measured at a right angle with, the center line of the southerly line of transmission towers located in said right of way); and on the west by the center line of the Daniel Webster Highway. Within said area, no building shall be constructed or used for industrial or commercial purposes if such building is situated within two hundred (200) feet of the boundary of an adjoining residential district, within which residences are constructed within two hundred (200) feet of the boundary line between such districts.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.01.1 - Industrial District - Metes and Bounds, I-1, I-2, I-3 (continued)

- D. From Souhegan River south to easterly extension of the access road and underpass to the F.E. Everett Turnpike Toll Gate, from Merrimack River west to 200 feet east of Daniel Webster Highway; and from easterly extension of the access road and underpass to the F.E. Everett Turnpike Toll Gate south to Nashua line from Merrimack River west to F.E. Everett Turnpike thence northerly along turnpike to Toll Gate thence easterly to point of beginning.
- E. Certain parcels in the Congress Park subdivision fronting on Columbia Circle, west of D.W.Highway, including Tax Map Parcels 4D-3/7, 8, 10, 12, 13, 14, 16, 18, 19, 21, 22, 24, 25, & 26.

EXCEPTION: The area bounded from Route 3 easterly along the center line of Wright Avenue to the B&M right-of-way, thence southerly along the B&M right-of-way to a point along the center line of Greeley Street to Route Three, thence northerly along the center line of Route Three to the center line of Wright Avenue.

Industrial I-2 District

- F. The boundaries of the Industrial District I-2 are as follows:
1. Beginning at a point on the westerly side of the F.E. Everett Turnpike and 50' northerly of Thornton Road West, thence; westerly parallel to said Thornton Road West to land of Robert MacKay, thence; northwesterly 510' along land of MacKay to a corner, thence; westerly crossing land of MacKay to the northeasterly corner of land of Fred Mears, thence; westerly by land of Fred Mears to land of Joseph Demers, thence; northerly and westerly by land of Demers to land of Pennichuck Water Works, thence; westerly and northwesterly by land of Pennichuck Water Works to the easterly corner of Merrimack School District land, said point being approximately 2134' southeasterly from Camp Sargent Road, thence; northerly on a straight line by land of Meadowcrest Corporation to a corner, said corner meaning and intending to be 1500' easterly of Camp Sargent Road and 1000' southerly from the nearest corner of Sargent Acres subdivision, thence; southeasterly on a straight line along land of Meadowcrest Corporation to a corner, said corner meaning and intending to be 1500' easterly of Camp Sargent Road and 1000' southerly from the nearest corner of Sargent Acres subdivision, thence; southeasterly on a straight line along of Meadowcrest Corporation to a point on the westerly side of F.E. Everett Turnpike, said point being 4200' northerly from Thornton Road West, thence; southerly by the F.E. Everett Turnpike to the point of beginning.
 2. The premises to the west the of western boundary of the F.E. Everett Turnpike right-of-way, north of the centerline of the Industrial Drive right-of way, east of the eastern boundary of the Camp Sargent Road right-of-way, south and east of the Sargent Acres Subdivision and south of the Public Service Company of New Hampshire Power Easement; including Tax Map Parcels 3C/191-1, 3D/28 and that portion of 3D/27 south of the Public Service Company of New Hampshire Power Line Easement.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.01.1- Industrial District - Metes and Bounds, I-1, I-2, and I-3 (continued)

(a) Buffer Zone: Beginning at a point on the easterly side of Camp Sargent Road, one hundred (100) feet southerly and westerly from the southwestern corner of Tax Map Parcel 3C/190; thence, easterly and southerly a distance of approximately eleven hundred twenty-five (1,125) feet, parallel to Spruce Street; thence, thirteen hundred seventy-five feet, more or less, northeasterly, to the peak elevation point of the unnamed hill west of Douglas Street (376 feet aMSL;) thence, northerly, a distance of one thousand twenty-five (1,025) feet, more or less, to a point at the southern boundary of the Public Service Company of New Hampshire Power Easement, one hundred (100) feet east of the northeastern corner of Tax Map Parcel 3C/109; thence, westerly to the northeastern corner of Tax Map Parcel 3C/109; thence, southerly along the rear lot lines of Tax Map Parcels 3C/109 and 110; thence westerly along the southern lot line of Tax Map Parcel 3C/111; thence, southeasterly along the rear lot lines of Tax Map Parcels 3C/129 through 132; thence, westerly along the southern lot line of Tax Map Parcel 3C/132 to the northeast corner of Tax Map Parcel 3C/133; thence, southerly along the rear lot lines of Tax Map Parcels 3C/133 and 134; thence, southerly to the northeastern corner of Tax Map Parcel 135; thence southerly and westerly along the rear lot lines of Tax Map Parcels 3C/135 through 140 to the northeastern corner of Tax Map Parcel 3C/141; thence, southerly along the eastern lot line of Tax Map Parcel 3C/141; thence, westerly along a line following the rear lot lines of Tax Map Parcels 3C/141, 142, 163, 164, 181, 182 and 190 to the easterly side of Camp Sargent Road; thence, southerly along the easterly side of Camp Sargent Road to the point of beginning.

Industrial I-3 District

G. The boundaries of the Industrial District I-3 are as follows: Beginning at a point on the northwesterly side of Continental Boulevard, said point being the southerly corner of a parcel of land belonging to the Town of Merrimack, New Hampshire, thence;

1. Southeasterly by a curve to the left having a radius of 1945.86', a distance of 184.99' to a stone bound set, thence;
2. S 36° 40' 34" W a distance of 1680.47' along the westerly side of said Continental Boulevard to a stone bound set, thence;
3. N 53° 19' 26" W a distance of 286.33' to an iron pin found at the land of the Merrimack Village District, thence;
4. N 00° 02' 26" E a distance of 111.36' to an iron pin found, thence;
5. N 10° 22' 09" W a distance of 118.47' to an iron pin found, thence;
6. N 43° 20' 22" W a distance of 144.39' to an iron pin found, thence;
7. N 25° 03' 04" W a distance of 179.67' to an iron pin found, thence;
8. N 01° 00' 22" W a distance of 322.73' to a concrete bound found on the southerly side of Greens Pond Road. The proceeding five courses were all by land of Merrimack Village District, thence;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section I-3 - Industrial District - Metes and Bounds I-1, I-2, I-3 (continued)

9. N 11° 35' 48" W a distance of 50.00' across Greens Pond Road to a point, thence;
10. S 78° 24' 12" W a distance of 136.30' to the beginning to a curve to the left, thence
11. Westerly by said curve to the left having a radius of 422.77' a distance of 110.52' to a point, thence;
12. S 63° 25' 32" W a distance of 175.45' to the beginning of a curve to the right, thence;
13. Westerly and northwesterly by said curve to the right, having a radius of 185.06' a distance of 175.42' to a point, thence;
14. N 61° 21' 35" W a distance of 54.51' to a point, thence;
15. Generally northeasterly along land of Merrimack Village District and Naticook Brook, a distance 2776' to a point at the land of the Town of Merrimack Water District, thence;
16. S 11° 45' 24" E a distance of 980.69' to the northerly side of said Greens Pond Road, thence;
17. S 25° 30' 41" E a distance of 50.00' across said Greens Pond Road to a point, thence;
18. N 64° 29' 19" E a distance of 280.00' to a stone bound at the northwest corner of the land of the Town of Merrimack, thence;
19. S 10° 52' 44" E a distance of 139.30' to a point, thence;
20. S 47° 52' 36" E a distance of 150.00' to the point of beginning.

This tract of land is shown as two lots on the Town of Merrimack Assessor's sheets and that portion of Greens Pond Road that lies between these two tracts. (See Map Attached, or Official Zoning Map in Planning Department).

2.01.2 - Limited Commercial District

Boundaries as defined by the Zoning Map which is hereby incorporated by reference.

2.01.3 - General Commercial District

Boundaries as defined by the Zoning Map which is hereby incorporated by reference.

2.01.4 - Residential District

Balance of the Town including the area bounded from Route Three easterly along the center line of Wright Avenue to the B&M right-of-way, thence southerly along the B&M right-of-way to a point along the center line of Greeley Street to Route Three, thence northerly along the center line of Route Three to the center line of Wright Avenue with the exclusion of Tax Map Parcels 4D-4/50, 54, 55, 56, 57, 58, 59, 60, and 4D-1/003.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.01.5 - Wetlands Conservation District

As defined in Section 2.02.7. Hereafter no land shall be used or occupied and no building or structures shall be erected, altered, used or occupied except in conformity with the regulations herein established for the district in which such land, building or structure is located.

2.01.6 - Flood Hazard Conservation District

Delineation: The Flood Hazard Conservation District is hereby determined to be the flood hazard areas designated by the Federal Insurance Administration, through on-site mapping of elevations in the flood hazard areas of the Town of Merrimack, dated September 25, 2009. The Flood Hazard Conservation District as herein defined is shown in the Flood Insurance Study and on a map designated as the Flood Insurance Rate Maps of the County of Hillsborough, New Hampshire. These maps are adopted by reference and declared a part of this section.

In all cases where the Flood Hazard Conservation District is super-imposed over another zoning district in the Town of Merrimack, New Hampshire, that district whose regulations are the more restrictive shall apply.

2.01.7 - Elderly Zoning District

Boundaries: Any development for the elderly shall be located within a one (1) mile radius from the intersection of the D.W. Highway and Baboosic Lake Road or within a two (2) mile radius of the intersection of the DW Highway and Baboosic Lake Road east of the turnpike.

2.01.8 - Planned Residential District

Boundaries: Boundaries are defined by the Zoning Map which is adopted as a part of this ordinance.

2.01.9 - Aquifer Conservation District

Location: The Aquifer Conservation District includes those areas shown on the Map entitled Town of Merrimack Aquifer Conservation District, dated December 1996 prepared by the Nashua Regional Planning Commission based upon the Department of Interior U.S. Geological Survey study entitled Hydrology of Stratified-Drift Aquifers and Water Quality in the Nashua Regional Planning Commission Area, South Central New Hampshire, 1987, and on the Map entitled Surficial Geology and Wellhead Protection Areas Delineated for Merrimack Village District Wells MVD-1 Through MVD-8, dated January 1996, prepared by Emory & Garrett Groundwater, Inc. The Aquifer Conservation District is subdivided into two areas:

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.01.9 - Aquifer Conservation District (continued)

1. Wellhead Protection Areas.
2. Balance of the Aquifer District.
3. The Balance of the Watershed

The Aquifer Conservation District maps are hereby declared to be a part of this ordinance and is incorporated by reference.

2.02 - Permitted Uses - All Districts

A. Permitted Uses - General: All uses set forth below are permitted in all zoning districts.

1. Streets, road and other access ways including foot, bicycle, horse paths and bridges and nature trails.
2. Farming, gardening, nursery, forestry, harvesting, grazing and other similar agricultural activities. The change of land to one or more agricultural uses as defined herein or expansion of an existing agricultural use shall be subject to nonresidential site plan review by the Planning Board.
3. Wildlife refuges, nature study and conservation areas and other activities designed to conserve soil, water, plants and wildlife.
4. Water impoundments and wells, drainage ways, streams, creeks and other paths of water runoff including the maintenance and operation of water control and supply devices such as dams, weirs and splash boards.
5. Excavation of sand and gravel providing all activities are conducted in accordance with an approved Earth Removal Permit issued pursuant to Section 14 of this ordinance.
6. Public Lands and Institutions.
7. The use or operation of equipment, vehicles or aircraft, including aircraft take offs and landings, for the purpose of emergency response, medical necessity, public safety, emergency landing, media coverage, building construction, equipment installation or political campaigning.
8. The installation of solar, wind, or other renewable energy systems designed to provide energy primarily for on-site use, and the building of any structures necessary for the collection of renewable energy provided that all applicable health and life and safety codes and requirements are adhered to and subject to any applicable building setback or height restrictions.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02 - Permitted Uses - All Districts (continued)

B. General Prohibitions:

1. No use of any kind shall be permitted in any district, if it in any way would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibrations, noise, light, or other objectionable features or if it would be hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to help ascertain conformance with the above regulations.
2. The underground storage of petroleum, refined petroleum products and organic solvents except with suitable secondary barriers and automatic alarm systems approved by the Planning Board is prohibited in every district. For the purpose of this regulation, storage in basement or cellar spaces shall not be considered as underground storage. This regulation shall apply to all new and replacement storage facilities constructed after the date of its adoption.
 - a) The underground storage of petroleum, refined petroleum products and organic solvents referred to in (2) above is not intended to include Liquified Petroleum Gas (LPG).

Section 2.02.1 - District R, Residential - Permitted Uses

A. Only the following uses are permitted in the residential district.

1. Residential uses and customary secondary accessory uses and structures. Note: aircraft takeoffs and landings on private land by the owner of such land or by a person who resides on such land are not valid and permitted accessory uses.
2. Home Occupations: Except as provided in 3 below, requests to conduct home occupations as set forth in this section must comply with the criteria listed below and receive permission from the Planning Board after a public hearing.
 - a) No more than one person who is not a resident of the premises is employed therein;
 - b) Off-street parking can be provided as specified in Section 18;
 - c) There is no external evidence of the occupation or office other than a sign limited to two (2) square feet.
 - d) No more than 25% of the inhabitable floor area of the dwelling is utilized by the occupation or office.
 - e) Such use shall be personal to the owner of the premises or the occupant with the permission from the owner and shall not survive a transfer of title of the real estate or be transferable to a new occupant.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.1 - District R - Permitted Uses (continued)

- f) Home Occupations shall be deemed to include professional offices, such as that of a doctor, dentist, lawyer, accountant, engineer, architect, and the business offices of a variety of similar occupations. They shall also include occupations such as dressmaking, cooking limited to items for off-premise consumption, home crafts, hairdressing and barbering limited to one chair, and family day care homes in accordance with RSA 170-E:2 IV (a).
 - g) Home occupations expressly do not include commercial kennels, the parking or storage of tractor trailers, auto repair or small engine repair or maintenance, welding, or other uses which involve the visible storage on the property of automobiles or the parts thereof.
 - h) A contractor or other tradesman may store building materials or construction equipment on his premises only within existing structures.
3. Home Occupations which meet all of the criteria listed below are not subject to site plan review and approval by the Planning Board.
- a) There is no external evidence of the occupation or office.
 - b) There is no individual employed on the premises who is not a resident.
 - c) The dwelling meets off-street parking requirements Section 18.
 - d) There are no visitors, customers or solicitations for individuals to visit the premises to conduct business.
 - e) There is no business sign of any type.
 - f) No more than 25% of the inhabitable floor area of the dwelling is utilized by the occupation or office.
 - g) Delivery of goods and materials is limited to step-vans and similar vehicles customarily associated with residential deliveries. No more than two (2) deliveries are permitted daily.
4. To increase housing alternatives while maintaining neighborhood aesthetics and quality, attached accessory dwelling units (ADU) are permitted on any property containing an owner-occupied single-family dwelling, provided that the applicant meets the criteria set forth below:
- a) A maximum of one (1) ADU per property is permitted. An ADU shall not be permitted on property where more than one primary dwelling unit (PDU) currently exists;
 - b) The ADU is contained within or will be an addition to an existing or proposed single family detached dwelling;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.1 - District R - Permitted Uses (continued)

- c) Exterior alterations, enlargements, or extensions of the PDU are permitted in order to accommodate the ADU. However, no such change is permitted which would alter the appearance of the PDU to look like a duplex or any other multi-family structure (i.e., the house should not look like it was designed to house more than one family). The construction of any exterior accessways which are required for access to the ADU shall be located to the side or rear of the building whenever possible. The ADU shall also be designed to remain functionally dependent on the PDU and shall not have provisions for separate utilities, garages, driveways, and other similar amenities;
 - d) The ADU shall contain no more than two bedrooms;
 - e) The ADU shall not exceed 1,000 square feet in area;
 - f) The ADU shall be connected internally to the PDU;
 - g) The property owner must occupy one of the two dwelling units;
 - h) One parking space for the ADU shall be provided in addition to any parking for the PDU;
 - i) The PDU, ADU, and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the single family dwelling. In order to assure compliance with this requirement, the property owners at the time the ADU is established shall be required to execute a restrictive covenant running in favor of the Town, which shall be recorded in the Hillsborough County Registry of Deeds and a copy provided to the Community Development Department and the Assessor prior to the issuance of a Certificate of Occupancy; and
 - j) Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.
5. Co-location of a new telecommunication antenna on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower, is also disguised through the use of camouflage or the color of the antenna(s) blends with the existing structure or surroundings if camouflage was not required with the tower approval. A building permit shall be required.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.1 - District R - Permitted Uses (continued)

- B. Special Exceptions: The Zoning Board of Adjustment may grant a special exception for the following use of lands within the residential district:
1. Churches, provided that it finds that all of the following conditions are met:
 - a) The specific site is an appropriate location for such a use or uses in terms of overall community development.
 - b) The use as developed will not adversely affect the neighborhood and shall produce no diminution of real estate values in the neighboring area.
 - c) There will be no nuisance or serious hazard to vehicles or pedestrians.
 - d) That an adequate parking area is provided for motor vehicles on the premises.
 - e) A buffer shall be erected and maintained to screen existing residential uses. Buffers may be fence screens, dense plantings of suitable trees and shrubbery, or naturally occurring shrubs and trees.
 - f) The use as developed will be restricted for church purposes only. No commercial use of a church within the residential zone will be allowed.
 2. Telecommunication Towers, provided that it finds that all of the following conditions are met:
 - a) The applicant shall meet the approval criteria set forth in a-e of B.1 above.
 - b) The applicant meets the criteria set forth in section 2.02.4.B.22.a (New Towers).
 - c) Proposed towers shall be disguised through the use of camouflage technologies such as trees, flagpoles, steeples, etc.
 - d) Written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna if the applicant is proposing to build a new tower. This evidence can consist of an analysis of the location, height, strength, and potential interference which would make co-location impractical.
 3. Co-location on Existing Non-Tower Structures, provided that it finds that all of the following conditions are met:
 - a) The applicant shall meet the approval criteria set forth in a-e of B.1 above.
 - b) The applicant meets the criteria set forth in section 2.02.4.B.22.c.
 - c) Proposed telecommunications antenna(s) shall be disguised through the use of camouflage technologies.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.1 - District R - Permitted Uses (continued)

C. Conditional Use Permits:

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Detached Accessory Dwelling Units (ADU's) in the R District.
2. The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for a Detached ADU:
 - a) A maximum of one (1) ADU per property is permitted. An ADU shall not be permitted on property where more than one primary dwelling unit (PDU) currently exists;
 - b) The Detached ADU shall be located only in the side or rear yard of the property;
 - c) The Detached ADU shall not exceed 50% of the size of the Principal Dwelling Unit (PDU) or 1,000 square feet in size, whichever is smaller;
 - d) Lots seeking a Detached ADU shall be comprised of at least 125% of the minimum lot area as required by Section 3.02.A, Table 1;
 - e) A Detached ADU shall not contain more than two bedrooms;
 - f) The property owner must occupy one of the two dwelling units;
 - g) One parking space for the ADU shall be provided in addition to any parking for the PDU;
 - h) The PDU, ADU, and lot shall not be converted to a condominium or any other form of legal ownership distinct from the ownership of the single family dwelling. In order to assure compliance with this requirement, the property owners at the time the ADU is established shall be required to execute a restrictive covenant running in favor of the Town, which shall be recorded in the Hillsborough County Registry of Deeds and a copy provided to the Community Development Department and the Assessor prior to the issuance of a Certificate of Occupancy;
 - i) Where municipal sewer service is not provided, the septic system shall meet NH Water Supply and Pollution Control Division requirements for the combined system demand for total occupancy of the premises.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.2- District C-1, Limited Commercial - Permitted Uses

- A. This district is intended to permit commercial uses in areas on streets with high traffic volumes which now have a mixture of residential and non-residential uses but where the trend has been conversion to commercial use. These areas are typified by small lots and are frequently abutted on the rear by attractive residential neighborhoods.

The intent is to permit limited commercial use while buffering residential neighborhoods from disturbance and disruption.

- B. Only the following uses are permitted in the limited commercial district:
1. Stores for the sale of retail goods or performance of personal services except those specifically excluded below;
 2. Business and professional offices;
 3. Specifically excluded are the following: banks, automotive related uses of all kinds, hotels, and motels, and “big box”, single user retail stores greater than 75,000 square feet.

C. Special Exceptions:

1. The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the limited commercial district C-1:
 - a) Restaurants,
 - b) Cafes,
 - c) Residential (other than a Planned Unit Development), and
 - d) Accessory uses as defined herein;
2. Provided that it finds that all of the following conditions are met:
 - a) The specific site is an appropriate location for such a use or uses in terms of overall community development.
 - b) The use as developed will not adversely affect the neighborhood.
 - c) There will be no nuisance or serious hazard to vehicles or pedestrians.
 - d) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.2 - District C-1, Limited Commercial - Permitted Uses (continued)

D. Conditional Use Permits:

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) within the C-1 District.
2. Purpose & Intent: The purpose of this Section is to implement NH RSA 126-X, authorizing the use of therapeutic cannabis and to regulate the locations and operations of Alternative Treatment Center uses, so as to promote and protect the public health, safety, and welfare of the residents of Merrimack. The intent of this Section is to:
 - a) Provide for the safe sale and distribution of therapeutic cannabis to patients who qualify to obtain, possess, and use cannabis for medical purposes under RSA 126-X and as managed by the New Hampshire Department of Health & Human Services; and
 - b) Protect public health and safety through reasonable limitations on business operations as they relate to noise, air and water quality, food safety, building safety, neighborhood and patient safety, security for the business and its personnel and other health safety concerns.
3. The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location):
 - a) An Alternative Treatment Center shall not be located within a pre-existing designated drug free school zone; and
 - b) The Alternative Treatment Center shall be located in a permanent structure and may not be located in a trailer, manufactured home, cargo container, or any structure that has axles with wheels. Drive-Thru services at an Alternative Treatment Center are prohibited; and
 - c) The Alternative Treatment Center shall provide for the proper disposal of cannabis remnants or byproducts, which remnants or byproducts shall not be placed in the facility's exterior refuse containers; and
 - d) The applicant shall provide a detailed narrative and floor plan, as well as any other relevant documentation, describing how the Alternative Treatment Center shall be secured. The security plan must take into account the measures that will be taken to ensure the safe delivery of any product to the facility (including permitted times for delivery), how the product will be secured on site, and how patient transactions will be facilitated in order to ensure safety. The security plan shall be reviewed and approved by the Merrimack Police Department; and
 - e) The use of cannabis on the premises is prohibited; and
 - f) The Alternative Treatment Center shall emit no cannabis related fumes, vapors or odors which can be smelled or otherwise perceived from beyond the lot lines of the property where the facility is located.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.2 - District C-1, Limited Commercial - Permitted Uses (continued)

- E. A buffer shall be erected and maintained to screen between commercial and existing residential uses. Buffers may be fence screens, dense plantings of suitable trees and shrubbery, or naturally occurring shrubs and trees.

2.02.3 - District C-2, General Commercial - Permitted Uses

- A. In recognition of the demand created by Merrimack's strategic location and continuing growth, commercial areas are hereby designated allowing for the establishment of retail businesses.

A criterion in their location must be readily accessible to high traffic volume carrying facilities to allow not only for the stores and facilities themselves but also for parking, landscaping, and ancillary requirements as well. The primary function of this district use would be to serve a regional and/or local shopping and service need.

- B. Only the following uses are permitted in the general commercial district. Such uses shall be primarily conducted inside a building:
1. Stores for sale of goods at retail or performance of regional customary personal services, or services clearly incidental to retail sales including services and construction materials, but no fabrication or manufacturing except incidental to, and on the same premises with, such retail sales, provided such incidental fabrication is conducted entirely within a building and does not occupy more than 20% of the floor area used for business purposes. Specifically excluded are "big box", single user retail stores greater than 75,000 square feet.
 2. Business, professional, or banking offices.
 3. Research and Development on lots of five (5) acres or more located in Commercial Parks of five or more lots.
 4. Restaurant, cafe, or other place serving food or beverages.
 5. Parking lot areas for transient motor vehicles, but not for storage of new or used motor vehicles for sale or hire.
 6. Hotel/motel.
 7. Churches.
 8. Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)

C. Special Exceptions:

1. The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the general commercial district C-2:

- a) Accessory uses as defined herein,
- b) Residential (other than a Planned Unit Development),
- c) Public Facilities,
- d) Sale or storage of used and new cars,
- e) Commercial recreation and entertainment, and
- f) Gasoline and automobile service and repair stations;

Provided that it finds that all of the following conditions are met:

- 1) The specific site is an appropriate location for such a use or uses in terms of overall community development,
- 2) The use as developed will not adversely affect the neighborhood,
- 3) There will be no nuisance or serious hazard to vehicles or pedestrians, and
- 4) Adequate and appropriate facilities will be provided for the proper operation of the proposed use or uses.

2. The Zoning Board of Adjustment may grant a special exception for Telecommunication Towers within the general commercial district C-2.

Provided that it finds that all of the following conditions are met:

- a) The applicant shall meet the conditions set forth in a-d of C.1 above.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)

- b) The applicant meets the following criteria:
- 1) Towers shall be set back from the property line by a distance equal to the height of the tower. The Planning Board may permit a lesser setback where alternative protections to abutting properties are provided by way of easement, covenant or other adequate deed restriction or where the proposed tower is designed in full compliance with all applicable building codes and building/construction plans submitted to the building inspector are certified and stamped by a licensed structural engineer prior to the issuance of a building permit. Prior to the issuance of a Building Permit, the tower design and plans shall be reviewed by a structural engineer designated by the Town.
 - 2) Accessory facilities must satisfy the minimum zoning district setback requirements.
 - 3) Towers shall maintain a neutral, non-reflective color so as to reduce visual obtrusiveness.
 - 4) For security purposes, towers and ancillary facilities shall be enclosed by a minimum six (6) foot fence.
 - 5) All utility buildings and structures accessory to a tower shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.
 - 6) Any proposed communications tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least three (3) additional users if the tower is over 100 feet in height or for at least one (1) additional user if the tower is less than 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
 - 7) Twice yearly inspections and bonding required: a) the structural integrity of all towers, whether in use, abandoned or unused, shall be inspected at least twice a year; b) copies of inspection reports shall be filed with the Community Development Department within thirty (30) days of the inspection; c) all owners of commercial wireless telecommunication towers shall obtain and maintain a bond to cover the cost of removal of abandoned, unused towers or portions of towers. d) the amount of said bond shall be reviewed by the Town every five (5) years to ensure the amount of security is adequate and may be increased if necessary; e) failure to file the required biannual inspection report with the Community Development Department within the specified time-frame shall constitute sufficient grounds to cause the bond to be called.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)

- 8) Permit Required: a) building permits shall be obtained for all towers, accessory structures and antennae; b) the number of users and the total number of antennae on any individual tower shall not exceed that which is permitted under the site plan approved by the Merrimack Planning Board.
 - c) Written evidence demonstrating that no existing structure can accommodate the applicant's proposed antenna if the applicant is proposing to build a new tower. This evidence can consist of an analysis of the location, height, strength, potential interference, and co-location costs which would make co-location impractical.
- D. Conditional Use Permit: Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (Non-Cultivation Location) and Self-Storage Facilities within the C 2 District.
1. Alternative Treatment Centers (Non-Cultivation Location): Subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.
 2. Self Storage Facilities
 - a) Purpose & Intent: Self-Storage Facilities have characteristics in common with both commercial uses and industrial uses. This subsection provides regulations to appropriately site Self-Storage Facilities in the C-2 District while maintaining the desired character and function of those zones. In general, Self-Storage Facilities generate low levels of vehicular and pedestrian activity and typically do not contribute to the vitality of a commercial area compared to other commercial uses. Historically self-storage facilities have visually resembled industrial facilities, but some trends in the industry have featured designs compatible with higher quality commercial development. If designed appropriately as stand-alone structures that emulate the exterior architecture of residential or multi-family residential or as components located within larger commercial/ office developments, Self-Storage Facilities may be located without adversely impacting the intent of the C-2 District or surrounding neighborhoods, provided the criteria below are satisfied.
 - b) The following criteria must be satisfied in order for the Planning Board to grant a Conditional Use Permit for Self-Storage Facilities:
 - 1) Granting of the application would meet some public need or convenience;
 - 2) Granting of the application is in the public interest;
 - 3) The property in question is reasonably suited for the use requested;
 - 4) The use requested would not have a substantial adverse effect on the rights of the owners of surrounding properties;
 - 5) There must be appropriate provision for access facilities adequate for the estimated traffic from public streets and sidewalks, so as to assure public safety and to avoid traffic congestion;

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Section 2.02.3 - District C-2, General Commercial - Permitted Uses (continued)

- 6) Electrical service to storage units shall be for lighting and climate control only. No electrical outlets are permitted inside individual storage units. Lighting fixtures and switches shall be of a secure design that will not allow tapping the fixtures for other purposes;
- 7) If the facility abuts residentially zoned property, the facility loading bays, docks or doors shall not be visible from the residential property or from public rights-of-way;
- 8) In order to promote visual compatibility with commercial development allowed in commercial zones, Self-Storage Facility buildings shall incorporate appropriate landscaping/screening and architectural and design features common to commercial and/or multifamily development. (Examples of such architectural and design features include: massing; proportion; facade modulation; exterior building materials and detailing; varied roofline; pedestrian scale; fenestration; repetition; etc.).

E. General Requirements:

Site Plan Review: In each case where a building or use is proposed in this district other than a single-family residence, the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with its subdivision and/or site review regulations. Such Board shall determine that all requirements of this ordinance have been met, and buffer protection provided to adjacent residential uses and, after holding a public hearing on each application, shall approve, approve with modifications, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such actions in its records.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.4 - District I-1 & I-2, Industrial - Permitted Uses

A. District Objectives

These districts allow for the establishment of manufacturing employment opportunities in the community and takes into consideration truck access and the availability of utilities. Research and development and other high density activities should be concentrated in this area.

Any permitted industrial or commercial use of which no land, building, structure, or equipment, or ancillary appendages shall be used for any purpose which would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibration, noise, light, or other objectionable features or hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to help ascertain conformance with the above regulations.

B. The following uses only are permitted in the Industrial District I-1:

1. Manufacturing Industries,
2. Warehouse and Wholesale Uses,
3. Office Uses Greater than 10,000 Square Feet,
4. Public Utilities,
5. Churches,
6. Gasoline Stations,
7. Enclosed Service and Repair, including Automotive Vehicles,
8. Machinery and Transportation Equipment, Sales, Service and Repair,
9. Freight and Trucking Terminals, Offices, and Brokers,
10. Contractors Yards,
11. Parking Garages,
12. Animal Hospital, Veterinary Clinics, provided at least 200 feet of side and rear yards are provided from any residential district,
13. Research & Testing Laboratory
14. Fuel Storage and Distribution (Bulk).
15. Printing Establishment,
16. Contract Cleaning Establishment,
17. Industrial Supply Establishment,

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Section 2.02.4 - District I-1 & I-2 - Permitted Uses (continued)

18. Support Uses to an Industrial District:
 - a) Restaurants,
 - b) Branch Banks,
 - c) Offices,
 - d) Hotel/Motel,
 - e) Daycare
19. Breweries and Bottling Facilities,
20. Athletic fields and indoor or outdoor skating facilities.
21. Self-Storage Facilities
22. Telecommunication Towers, Co-location on Existing Towers, and Co-location on Existing Non-Tower Structures, provided that the following criteria are satisfied:
 - a. New Towers
 - 1) Towers shall be set back from the property line by a distance equal to the height of the tower. The Planning Board may permit a lesser setback where alternative protections to abutting properties are provided by way of easement, covenant or other adequate deed restriction or where the proposed tower is designed in full compliance with all applicable building codes and building/construction plans submitted to the building inspector are certified and stamped by a licensed structural engineer prior to the issuance of a building permit. Prior to the issuance of a Building Permit, the tower design and plans shall be reviewed by a structural engineer designated by the Town.
 - 2) Accessory facilities must satisfy the minimum zoning district setback requirements.
 - 3) Towers shall maintain a neutral, non-reflective color so as to reduce visual obtrusiveness.
 - 4) For security purposes, towers and ancillary facilities shall be enclosed by a minimum six (6) foot fence.
 - 5) All utility buildings and structures accessory to a tower shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.4 - District I-1 & I-2 - Permitted Uses (continued)

- 6) Any proposed communications tower shall be designed, structurally, electrically, and in all respects, to accommodate both the applicant's antennas and comparable antennas for at least three (3) additional users if the tower is over 100 feet in height or for at least one (1) additional user if the tower is less than 100 feet in height. Towers must be designed to allow for future rearrangement of antennas upon the tower and to accept antennas mounted at varying heights.
 - 7) Twice yearly inspections and bonding required: a) the structural integrity of all towers, whether in use, abandoned or unused, shall be inspected at least twice a year; b) copies of inspection reports shall be filed with the Community Development Department within thirty (30) days of the inspection; c) all owners of commercial wireless telecommunication towers shall obtain and maintain a bond to cover the cost of removal of abandoned, unused towers or portions of towers; d) the amount of said bond shall be reviewed by the Town every five (5) years to ensure the amount of security is adequate and may be increased if necessary; e) failure to file the required biannual inspection report with the Community Development Department within the specified time-frame shall constitute sufficient grounds to cause the bond to be called.
 - 8) Permit Required: a) building permits shall be obtained for all towers, accessory structures and antennae; b) the number of users and the total number of antennae on any individual tower shall not exceed that which is permitted under the site plan approved by the Merrimack Planning Board.
- b. Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.
- c. Co-location on Existing Non-Tower Structures, provided that the following criteria are satisfied:
- 1) Installing an antenna(s) on an existing structure other than a tower, such as a building, water tank, light fixture, or utility pole, is permitted, without Planning Board review, so long as the additional antenna(s) is no more than 20 feet higher than the existing structure and the color of the antenna(s) blends with the existing structure or surroundings.
 - 2) Accessory facilities must satisfy the minimum zoning district setback requirements of section 3.02.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

- 3) The antenna(s) and supporting electrical and mechanical equipment shall be a neutral color that is the same as the color as the supporting structure so as to make the antenna(s) and related equipment as visually unobtrusive as possible.
- 4) All utility buildings and structures accessory to the antenna(s) shall be screened from view by suitable vegetation from any adjacent residentially zoned property or public roads.

C. Alternative Treatment Centers Permitted in the I-1 District by Conditional Use Permit

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (both Cultivation and Non-Cultivation Locations) within the I-1 District, subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

D. Mixed Use Developments Permitted in the I-1 District by Conditional Use Permit

Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for mixed uses on parcels in the I-1 District consisting of a minimum of 50 acres provided there is compliance with the terms of this section.

1. Purpose

The purpose of this section is to permit mixed uses which allow the creative integration of industrial, commercial and residential housing developments based on a master site development plan that permits flexibility in the design and integration of the permitted uses contained therein. The permitted mixed uses are intended to be complementary, so as to provide for the appropriate use of the land, fiscally beneficial development, the efficient provision of public services, and expanded opportunities for a diversity of residential development outside the traditional residential districts.

Conditional Use Permits are limited to single consolidated tracts of land situated in the I-1 Industrial District that:

- a. Are a minimum of 50 acres in size;
- b. Are serviced by municipal sewer;
- c. Are serviced by the Merrimack Village District or Pennichuck Water Works;
- d. Have 500 (five hundred) feet of continuous frontage on the State maintained portions of Daniel Webster Highway located south of Star Drive to the Nashua City Line, or north of Bedford Road to the Bedford Town Line.

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Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

2. Permitted Uses

Uses which may be permitted by Conditional Use Permit, provided the provisions of this Section are satisfied, include only:

- a. Uses permitted within the (I-1) Industrial District (per Section 2.02.4.B);
- b. Uses permitted within the (C-2) General Commercial District (per Section 2.02.3.B 1 through 7), but with no restriction as to size;
- c. Uses permitted within the Elderly Zoning District (per Section 2.02.9) subject to the residential density calculation requirements of Section 15.04;
- d. Residential Uses as permitted within the Planned Unit Development District (per Section 15);
- e. Public and private open space and recreation, public facilities, and commercial recreation uses.

Residential density calculations under C and D above shall be based upon that portion of the parcel being set aside for residential use, and shall not include land proposed for the uses referenced in A, B, or E.

3. Master Site Development Plan Required

The applicant shall prepare and submit, for review and possible approval by the Planning Board, a Master Site Development Plan for the mixed use development of the parcel. The Master Site Development Plan shall include, at a minimum:

- a. The location, type, and amount of the uses proposed to be developed on the parcel, including the proposed area, percentage and intensity of each proposed use;
- b. The proposed provisions for utilities, access roads, parking, and public and private ways;
- c. Areas proposed to be permanently dedicated for public or private open space or other public purpose;
- d. Proposed buffers between uses and adjacent properties in accordance with the provisions of Section 2.02.4.C.5 of this Ordinance;
- e. Proposed phasing of the overall site development including the general sequence in which related public and private improvements will be accomplished;
- f. In the event the development site is not comprised of a single parcel, the master site development plan shall detail the manner in which multiple parcels will be consolidated into a single parcel and subsequently subdivided, if necessary, to facilitate the completion of the plan.

4. Dimensional Requirements

In general, the mixed use development shall be required to comply with the provisions of Section 3.02, provided however that:

- a. Proposed Industrial (I-1) uses and lots shall be controlled by the notes and dimensional requirements of Section 3.02;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

- b. Proposed General Commercial (C-2) uses and lots shall be controlled by the notes and dimensional requirements of Section 3.02;
- c. Proposed Elderly Housing uses and lots shall be controlled by the dimensional requirements of Section 2.02.9;
- d. Proposed Planned Unit Development uses and lots shall be controlled by the requirements of Section 15;
- e. The Planning Board may in its sole discretion require more or less stringent dimensional requirements than those referenced above to facilitate the integration and connections between mixed use areas being developed, and to provide reasonable buffering and separation between proposed residential, commercial and industrial uses.

5. Criteria for Granting a Conditional Use Permit

In order to obtain a Conditional Use Permit from the Planning Board, the applicant must demonstrate to the satisfaction of the Planning Board that the following criteria are met by the proposed development:

- a. The property in question is reasonably suited for the proposed use(s) and will not create undue hazard or excessive expenditure of public funds to insure that public health and safety are maintained throughout and following the development of the parcel;
- b. The applicant shall demonstrate, to the satisfaction of the Board, that the development will generate a net positive fiscal impact for the Town. The Planning Board may require preparation and review of a fiscal impact assessment to demonstrate compliance with this requirement;
- c. The proposed development shall include provisions, satisfactory to the Planning Board, to insure that current and future municipal service capacity for police, fire, public works, general government, recreation, and school services and facilities within the community will not be adversely affected by the development. The Planning Board may require preparation and review of a municipal service capacity impact assessment to demonstrate compliance with this requirement;
- d. The proposed mixed use development shall not create an undue hazard or nuisance for vehicular or pedestrian traffic; shall include adequate provisions for safe and efficient traffic access, circulation and parking; and shall promote pedestrian and public transportation linkages within and between sites to the maximum practical extent. The Planning Board may require preparation and review of a traffic impact assessment to demonstrate compliance with this requirement;

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Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

- e. Adequate and appropriate public infrastructure shall be provided to ensure the proper operation of the proposed mixed uses. The Planning Board may require that portions of the project be designed so as to complete any street or utility systems in the vicinity of the subject parcels consistent with projected town plans for such improvements;
- f. The proposed development must comply with all applicable federal, state, and local environmental laws, including all appropriate sections of the Town's zoning ordinance and subdivision regulations;
- g. Adequate buffers, satisfactory to the Planning Board, shall be provided along the development parcel's perimeter boundaries, and along proposed boundaries of parcels interior to the mixed use development. Buffers and landscaping shall reflect the need for appropriate separation and transitions between adjoining industrial, commercial and residential uses;
- h. The proposed development plan shall provide for a continuity of open space throughout development. Open space and other recreational areas within the development shall be related to projected town plans for such improvements, and should not be limited to trails and paths, although these are desirable features of the design;
- i. The proposed development must demonstrate compliance with the architectural design criteria contained in Section 12.04.3 of the Merrimack Subdivision Regulations pertaining to "Transitional Districts", provided that the Planning Board may permit the Applicant to utilize Merrimack Subdivision Regulations Section 12.04.2 "Industrial Design District" criteria for exclusively industrial facilities within the development;
- j. The proposed development will not result in unreasonable impacts to adjoining properties or uses, by way of light, noise, pollution, visual blight, odor, vibration or other nuisance. The Planning Board may require preparation and review of such studies or assessments as it may deem necessary to demonstrate compliance with this requirement;
- k. The proposed development addresses, to the satisfaction of the Planning Board, the general design criteria of Section 15.03.D.3 a) through g).

6. General Requirements

- a. Any applicant proposing to develop land under this Section shall first apply to the Planning Board for a Conditional Use Permit approval, pursuant to the terms of this Section. The applicant may be assessed reasonable fees to cover the costs of special investigative studies and/or review of documents required to facilitate the Board's determination(s) regarding the criteria to be met, and to cover the costs of review by the Board's legal counsel and/or any third party consultants;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

- b. Following the conclusion of its review of the proposal the Planning Board may approve, approve with modification, or disapprove the application for Conditional Use Permit;
- c. The Planning Board shall require, as a condition of its approval of any Conditional Use Permit, the execution of a Development Agreement or other similar instrument specifying: the phasing, timing and sequence of the improvements contained within the development; the performance guarantees relating thereto; and any other such development-related information the Board deems necessary to insure the successful completion of the development as proposed and approved;
- d. In each case where a Conditional Use Permit has been granted, the applicant must subsequently obtain subdivision approval for the platting of individual lot(s) and/or site plan approval(s) for buildings or sites within the mixed use development in accordance with the Town of Merrimack Subdivision and Site Plan Review Regulations;
- e. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to implement this Section of the Zoning Ordinance, and such regulations and standards shall be adopted prior to the Board taking action on any application under this Section.

7. Conditional Use Permit – Validity Period

If, after a conditional use permit has been approved by the Planning Board, such approval is not acted upon within a period of two (2) years from the date of the approval, then such approval shall be null and void. Actions sufficient to vest an approval for a conditional use permit include Planning Board site plan or subdivision approval, issuance of a building permit, or a Certificate of Occupancy issued by the Community Development Department where no Planning Board approval or building permit is required.

However, should any site plan or subdivision approval or building permit expire unused after the conclusion of the two-year validity period provided for herein, any conditional use permit granted as a precondition to said site plan or subdivision approval or permit shall become void as well.

Any application to extend the two-year validity period shall demonstrate to the satisfaction of the Planning Board that it was impossible or impractical to receive the necessary approvals to move forward in reliance on the permit granted within two years.

Any renewal/extension application shall be filed with the Planning Board no sooner than 90 days, nor later than 30 days, prior to the conditional use permit expiration.

The Planning Board may, in its sole discretion, grant such extension of the above validity period as it deems warranted.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

D. The following uses only are permitted in the Industrial District I-2:

1. Light Manufacturing Industries,
2. Warehouse and Wholesale Uses,
3. Office Uses Greater than 10,000 Square Feet,
4. Churches,
5. Parking Garages,
6. Printing Establishment,
7. Support Uses to an Industrial District:
 - a) Restaurants,
 - b) Branch Banks,
 - c) Offices,
 - d) Hotel/Motel
8. Telecommunication Towers, Co-location on Existing Towers, and Co-location on Existing Non-Tower Structures, provided that the following criteria are satisfied:
 - a) New Towers, provided the applicant meets the criteria set forth in section 2.02.4.B.21.A (New Towers).
 - b) Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.
 - c) Co-location on Existing Non-Tower Structures, provided the applicant meets the criteria set forth in section 2.02.4.B.21.C (Co-location on Existing Non-Tower Structures). A building permit shall be required.
9. Outlet Village Shops permitted by Conditional Use Permit.
 - a) Outlet Village Shops shall be defined as a collection of buildings arranged in a configuration consisting of multiple adjacent buildings having a center courtyard and connecting walkways in which no single building exceeds 120,000 square feet of gross floor area and no single shop shall exceed 40,000 square feet of gross floor area, and in which are located clothing, appliance, housewares, electronics, hardware and furniture outlet or similar shops, together with accessory and supporting restaurants, which restaurant total gross floor area shall not exceed 15% of the total gross floor area of the Outlet Village Shops. The total gross floor area of the Outlet Village Shops may not exceed 650,000 square feet within the I-2 District in total.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

- b) As provided in RSA 674:21, Innovative Land Use Controls, this section of the Zoning Ordinance provides for the granting of conditional use permits, by the Planning Board, as follows:
- 1) The Planning Board shall vote either to approve a conditional use permit as presented, approve it with conditions or deny it.
 - 2) The applicant shall be required to apply for and obtain a site plan approval, in accordance with the site plan regulations of the Town of Merrimack.
 - 3) The applicant shall be required to submit a financial surety in accordance with the subdivision regulations and site plan regulations of the Town of Merrimack prior to commencing construction of any building.
 - 4) The applicant may be assessed reasonable fees to cover the costs of special investigation studies and/or review of documents required by particular applications, reviews by Town's legal counsel and any third party consultant, as may be required by the Planning Board pursuant to the site plan regulations of the Town of Merrimack.
 - 5) The applicant shall be required to submit an economic or fiscal impact analysis reflecting the impact of the proposed use upon the Town's infrastructure, facilities, support services and taxes.
 - 6) The following criteria must be satisfied in order for the Planning Board to grant a conditional use permit hereunder:
 - (i) the proposed location for the Outlet Village Shops must be readily accessible to high traffic volume carrying facilities, and sited to allow not only for the stores and facilities themselves but also for parking, landscaping, and ancillary requirements. The primary function of this district use would be to serve a regional and/or local shopping and service need;
 - (ii) the proposed use is consistent with the objectives of Section 2.02.3.B.1 and the second paragraph of Section 2.02.4 of the Town of Merrimack Zoning Ordinance. Specifically excluded are "big box" single user retail stores greater than 75,000 square feet;
 - (iii) the property in question is reasonably suited for the use requested, and does not create a hazard to surface or underground water resources;
 - (iv) the property in question shall be specifically located for readily available access to the F. E. Everett Turnpike;
 - (v) the proposed use will not result in unreasonable impacts by way of increased noise, visual blight, odor or other nuisance to other uses within the zoning district or adjoining land uses;
 - (vi) granting the permit is in accord with the general purpose of the Zoning Ordinance as set forth in Section 1.01;

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Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

- (vii) the proposed use will have a high tax value and will contribute significantly to the tax base of the Town of Merrimack as contemplated by the Economic Development and Future Land Use and Recommendations Chapters of the Master Plan Update, 2002;
 - (viii) The proposed use shall demonstrate a significant economic and fiscal benefit to the Town in the judgment of the Board.
- 7) The Outlet Village Shops shall have the following density, dimensional and parking requirements:
- (i) minimum lot area - 100 acres;
 - (ii) minimum landscaped buffer, consisting of dense plantings of suitable trees and shrubbery or naturally occurring trees and shrubbery supplemented by additional plantings as may be required by the Planning Board from a residential district - 100 feet;
 - (iii) minimum building setback from a residential use - 300 feet;
 - (iv) minimum percentage of open space - 30%;
 - (v) minimum parking ratio - 5.5 spaces per 1,000 square feet of gross leasable area;
 - (vi) buffer zone - no construction or improvements shall be made within the Buffer Zone within the I-2 District as defined in Section 2.01.1.F.2(a) of the Zoning Ordinance.
- 8) The Outlet Village Shops shall have a comprehensive sign program including ground mounted pylon signs, directional signs and building mounted signs. Notwithstanding the terms and provisions regarding signs incorporated elsewhere within the Zoning Ordinance, the sign program shall be of a nature and magnitude as may be determined by the Planning Board in its sole discretion to be reasonably necessary and appropriate given the location and setting of the proposed use to be approved at the time of the approval of the site plan for the proposed use.
- 9) Whenever the provisions of this subsection conflict with any other provisions of the Zoning Ordinance, the provisions of this subsection shall apply.
- 10) The Board shall adopt such standards and regulations as it may deem necessary in order to implement this section of the Zoning Ordinance, and such regulations and standards shall be adopted prior to the Board taking action on any application under this section of the Zoning Ordinance.

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Section 2.02.4 - District I-1 & I-2, Industrial - Permitted Uses (continued)

E. Special Exceptions

The Zoning Board of Adjustment may grant a special exception for the following uses of lands within the Industrial Districts I-1 & I-2:

1. Accessory uses as defined herein.
2. Other industrial uses except waste disposal sites and dumps, upon the approval by the Board of Adjustment such uses are of the same general character as those permitted and which will not be detrimental to the other uses within the district or to the adjoining land uses, shall be permitted. This may include the conversion of existing residential uses to commercial or industrial uses as are allowed and provided for in paragraph B. of this section.
3. On-site caretakers lodges or residences.
4. For the purpose of determining whether an applicant shall be granted a special exception as provided in this section, the Zoning Board of Adjustment shall use the special exception criteria set forth in a-d only, subsection B.1, Special Exceptions, Section 2.02.1 District R, Residential Zone.

F. Alternative Treatment Centers Permitted in the I-2 District by Conditional Use Permit

1. Pursuant to the authority provided in RSA 674:21, the Planning Board may grant a Conditional Use Permit for Alternative Treatment Centers (both Cultivation and Non-Cultivation Locations) within the I-2 District, subject to the requirements of Section 2.02.2.D, Subsections 2 and 3.

G. General Requirements

Site Plan Review: In each case where a building or use is proposed in these districts other than a single-family residence, the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with Subdivision Regulations. The Planning Board shall determine that all requirements of this Ordinance have been met, including appropriate conditions and safeguards with respect to the adequacy of traffic access, circulation and parking, landscaping and screening. After holding a public hearing on each application, the Planning Board shall approve, approve with modification, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such action in its records.

2.02.5 - District I-3, Industrial - Permitted Uses

A. District Objectives

This district shall allow for establishment of manufacturing employment opportunities in the community and take into consideration the proximity of the town water supply wells and established residential uses adjacent to this district.

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Section 2.02.5 - District I-3, Industrial - Permitted Uses (continued)

Development in this district shall take cognizance of the need to protect the quality of the Merrimack Village District wells by assuring that the well areas are not deprived of natural replenishment and that foreign materials (salts, oils, etc.) are not introduced into the ground water.

With respect to any permitted industrial or commercial use, no land, building, structure, or equipment shall be used for any purpose which would be injurious, noxious, or offensive by way of odor, fumes, smoke, dust, vibration, noise, or other objectionable features or hazardous to the community on account of fire or explosion or any other cause. The Planning Board shall adopt such standards and regulations as it may deem necessary in order to make proper evaluation, according to the above criteria, of any proposed use.

B. General Requirements

Site Plan Review: In each case where a building or use is proposed in this district other than a single-family residence the Building Official shall refer the site plan of the proposal to the Planning Board for its review in accordance with its Subdivision Regulations. The Planning Board shall determine that all requirements of this ordinance have been met, including appropriate conditions and safe-guards with respect to the adequacy of traffic access, circulation, parking, landscaping and screening.

After holding a public hearing on each application, the Planning Board shall approve, approve with modification, or disapprove said site plan. In modifying or disapproving any site plan, the Board shall enter its reasons for such action in its records.

C. The following uses only are permitted in the Industrial District I-3:

1. Light manufacturing industries (i.e. electronics, light mechanical assembly, etc.)
2. Research and Development.
3. Offices.
4. Telecommunication Towers, Co-location on Existing Towers, and Co-location on Existing Non-Tower Structures, provided that the following criteria are satisfied:
 - a) New Towers, provided the applicant meets the criteria set forth in section 2.02.4.B.21.A (New towers).
 - b) Co-location on Existing Towers, so long as the additional telecommunications antenna(s) is no more than 20 feet higher than the existing tower and the color of the antenna(s) blends with the existing structure or surroundings. A building permit shall be required.
 - c) Co-location on Existing Non-Tower Structures, provided the applicant meets the criteria set forth in section 2.02.4.B.21.C (Co-location on Existing Non-Tower Structures). A building permit shall be required .

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Section 2.02.5 - District I-3, Industrial - Permitted Uses (continued)

D. Special Exceptions

1. Accessory uses as defined herein.
2. Other industrial uses upon the approval by the Board of Adjustment upon finding that such uses are of the same general character as those permitted and which will not be detrimental to the other uses within the district or to the adjoining land uses shall be permitted.
3. For the purpose of determining whether an applicant shall be granted a special exception as provided in this section, the Zoning Board of Adjustment shall use the special exception criteria set forth in a-d only, subsection B.1 Special Exceptions, Section 2.02.1, District R, Residential Zone.

2.02.6 – Sexually Oriented Businesses

A. Purpose and intent. It is the purpose of this section to establish reasonable and uniform regulations to prevent the inappropriate location and concentration of sexually oriented businesses within the Town of Merrimack. It is the intent to promote the health, safety and general welfare of the citizens of the Town of Merrimack. It is the intent of this section that the regulations be utilized to prevent problems of blight and deterioration which accompany and are brought about by the inappropriate location and concentration of sexually oriented businesses. The provisions of this amendment have neither the purpose nor the effect of imposing limitation or restriction on the content of any communicative materials, including sexually oriented materials. It is not the intent nor effect of this article to restrict or deny access by adults to sexually oriented materials protected by the First Amendment, or to deny access by the distributors and exhibitors of sexually oriented entertainment to their intended market. It is not the intent nor effect of this article to condone or legitimize the distribution of obscene material.

B. Definition. A sexually oriented business is any place of business at which any of the following activities is conducted:

1. Adult bookstore or adult video store. A business that devotes more than fifteen (15) percent of the total display, shelf, rack, table, stand or floor area, utilized for the display and sale of the following:
 - a) Books, magazines, periodicals, or other printed matter, or photographs, films, motion pictures, video cassettes, slides, tapes, records, CD-ROMS or other forms of visual or audio representations which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1; or,
 - b) Instruments, devices or paraphernalia which are designed for use in connection with “sexual conduct” as defined in RSA 571-B:1, other than birth control devices.

An adult bookstore or adult video store does not include an establishment that sells books or periodicals as an incidental or accessory part of its principal stock and trade and does not devote more than fifteen (15) percent of the total floor area of the establishment to the sale of books and periodicals.

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Section 2.02.6 – Sexually Oriented Businesses (continued)

2. Adult motion picture theater. An establishment with the capacity of five (5) or more persons, where for any form of consideration, films, motion pictures, video cassettes, slides or similar photographic reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1, for observation by patrons. For purposes of this section, substantial portion of the total portion of the total presentation time shall mean the presentation of films or shows described above for viewing on more than seven (7) days within any fifty-six (56) consecutive day period.
3. Adult motion picture arcade. Any place to which the public is permitted or invited wherein coin or slug-operated or electronically, electrically or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to five (5) or fewer persons per machine at any one time, in which a substantial portion of the total presentation time of the images so displayed is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.
4. Adult drive-in theater. An open lot or part thereof, with appurtenant facilities, devoted primarily to the presentation of motion pictures, films, theatrical productions and other forms of visual productions for any form of consideration to persons in motor vehicles or on outdoor seats, in which a substantial portion of the total presentation time of the images being presented for observation by patrons is devoted to the showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.
5. Adult cabaret. A nightclub, bar, restaurant, or similar establishment which during a substantial portion of the total presentation time features live performances which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1, and/or feature films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is devoted to showing of material which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.
6. Adult motel. A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions, a substantial portion of the total presentation time of which is distinguished or characterized by an emphasis upon the depiction or description of materials which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.
7. Adult theater. A theater, concert hall, auditorium or similar establishment either indoor or outdoor in nature, which for any form of consideration, regularly features live performances, a substantial portion of the total presentation time of which are distinguished or characterized by an emphasis on activities which meet the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.

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Section 2.02.6 – Sexually Oriented Businesses (continued)

8. Nude model studio. A place where a person who appears in a state of nudity or displays male genitals in a state of sexual arousal and/or the vulva or more intimate parts of the female genitals and is observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration of such display is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.
 9. Sexual encounter center. A business or commercial enterprise that as one of its primary business purposes, offers for any form of consideration: (a) physical contact in the form of wrestling or tumbling between persons of the opposite sex; or (b) activities between male and female persons and/or persons of the same sex when one or more persons is in the state of nudity; or where the activities in (a) or (b) is characterized by an emphasis on activities which meets the definition of “harmful to minors” and/or “sexual conduct” as set forth in RSA 571-B:1.
- C. Prohibited locations. In addition to any use, restriction or prohibition contained in section 2.02.1 through 2.02.5 of this ordinance, no sexually oriented businesses, as defined above, shall be permitted:
1. Within 1000 feet of another sexually oriented business which is either existing at the time of the effective date of this amendment or one for which a building permit has been applied for, and no sexually oriented business shall be permitted within a building, premise, structure or other facility that contains another sexually oriented business;
 2. Within 1000 feet of a Residential zoning district boundary line (Note: Planned Residential District is considered a residential district);
 3. Within 1000 feet of a Church, place of worship, parish house, convent, library, public, parochial or private school, kindergarten, licensed day care and/or day nursery, State approved day care center, public sports/recreation park, or recreational facility where minors may congregate such as, but not limited to, the YMCA;
 4. Within 1000 feet of a Town boundary line.
- D. Measure of distance. The distancing requirements above shall be measured in a straight line, without regard to intervening structures, from the property line of any site above (unless otherwise specified) to the closest exterior wall of the sexually oriented business.
- E. Additional reasonable regulations. The Planning Board is empowered to review and approve permit applications for sexually oriented businesses, and to impose reasonable restrictions for buffering, outdoor lighting, parking, adequate ingress and egress from the site off of and on to public roads, pedestrian movement, and to provide for appropriate landscaping and building aesthetics consistently with the “Town of Merrimack Subdivision Regulations”, and to avoid site development layout which may result in negative environmental impacts and to insure that any signage and any displays of merchandise visible to the general public are in conformity with RSA 571-B.

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Section 2.02.6 – Sexually Oriented Businesses (continued)

- F. Severability. The invalidity of any section or provision of this section shall not invalidate of any other section or provision thereof.

2.02.7 - District W, Wetlands Conservation District - Permitted Uses

- A. No Construction permitted except as noted below under Permitted Uses.

1. The Wetlands Conservation District : in the Town of Merrimack is hereby determined to consist of three areas: (1) Wetland Soils – Those areas meeting the definition of wetland soils as defined in section 2.02.7.A.1(a) below; (2) Wetlands - Those areas meeting the definition of a wetland(s) as defined in Section 2.02.7.A.1(b), below; (3) and Buffer Areas - All buffer areas established under Section 2.02.7.A.7 of this Ordinance.

- a) Wetland Soils – The wetland soils in the Town of Merrimack are those areas delineated as poorly drained or very poorly drained soils identified by the U.S. Department of Agriculture, Soil Conservation Service, through field mapping surveys completed in 1971 and shown on its field mapping photographic sheets for the Town of Merrimack, New Hampshire. The soil types which the Soil Conservation Service has determined in its field mapping surveys to be poorly drained or very poorly drained soils shall include the following (a detailed explanation of soil types is included in the Hillsborough County Soil Handbook which is on file with the Planning Board and in the office of the Soil Conservation Service, Milford, N.H.):

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Section 2.02.7 - District W, Wetlands Conservation District - Permitted Uses (continued)

Published Soil Symbol	Old Soil Symbol	Published Soil Name
Rp	5, 5-A-1, 5G	Rippowam fine sandy loam
Sm	6, 6-A-1, 6G	Saco Variant silt loam
Rp	7, 7-A-1	Rippowam fine sandy loam
So	15, 15-A-1	Scarboro mucky loamy sand
Sr	48	Scarboro stony mucky loamy sand
BoA	95, 195-A-1	Borochemist, nearly level
Sn	116, 116-A	Saugatuck loamy sand
Gw	195	Greenwood mucky peat
BpA	197	Borochemist, ponded
PiA	214A, 214-A-1	Pipestone loamy sand, 0-3% slopes
Gw	295	Greenwood mucky peat
Cu	395	Chocorua mucky peat
Cu	495	Chocorua mucky peat
PiA	514, 514-A, 514-A-1	Pipestone loamy sand, 0-3% slopes
Bg	533, 533-A	Binghamville silt loam
LtA	546, 546-A-1	Leicester-Walpole complex, 0-3% slopes
LvA	547, 547-A-1	Leicester-Walpole complex, 0-3% slopes
Sr	549, 549-A-1	Scarboro stony mucky loamy sand
PiB	214B, 214-B-1	Pipestone loamy sand, 3-8% slopes
LtB	546B	Leicester-Walpole Complex stony, 3-8% slopes
LvB	547-B, 547-B-1	Leicester-Walpole Complex stony, 3-8% slopes
ReB	647B	Ridgebury loam, 3-8% slopes

- b) Wetlands : areas that are inundated or saturated by surface or ground water at a frequency or duration sufficient to support, and that under natural conditions, does support a prevalence of vegetation typically adapted for life in saturated soil conditions. Three technical criteria: hydric soils, hydrophytic vegetation and wetland hydrology under natural conditions are required for the positive identification of a wetland. Wetlands generally include, but are not limited to, swamps, marshes, bogs and similar areas. Where on-site delineation is required wetlands shall be delineated on the basis of hydrophytic vegetation, hydric soils, and wetland hydrology, in accordance with the techniques outlined in the Corps of Engineers, Wetlands Delineation Manual (Technical Report Y-87-1, January 1987) and field indicators for identifying Hydric Soils in New England (Version 2) NEIWPCC July 1998 (as these may be amended from time to time). Where differences arise between the SCS mapped soils and the on-site wetlands delineation of soils based on the above manual, the procedures of Section 2.02.7.A.5, below shall be followed.

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Section 2.02.7 - District W, Wetlands Conservation District - Permitted Uses (continued)

- c) Buffer Areas: are those areas immediately adjacent to Wetlands as defined in 2.02.7.A.7 of this Ordinance.
2. Purpose: In the interest of public health, convenience, safety and welfare, the regulations of this District are intended to guide the use of areas of land with extended periods of high water tables:
- a) To prevent the development of structures and other land uses on or adjacent to wetlands that would contribute to pollution of surface and ground water.
 - b) To prevent the destruction and degradation of natural wetlands that provide flood protection.
 - c) To prevent unnecessary or excessive expenses to the Town to provide and maintain essential service and utilities which arise because of inharmonious use of wetlands and adjacent upland areas.
 - d) To encourage those uses that can be appropriately and safely located in and around wetland areas.
3. Permitted Uses: Any use that does not result in the erection of any structure or alter the surface configuration by the addition of fill or by dredging and that is otherwise permitted by the zoning ordinance.
- a) Forestry-tree farming;
 - b) Agriculture;
 - c) Water impoundments and well supplies;
 - d) Drainage ways, streams, creeks, or other paths of normal runoff water;
 - e) Wildlife refuge;
 - f) Parks and such recreation uses as are consistent with the purpose and intentions of Section 2.02.7(A)(2);
 - g) Conservation areas and nature trails;
 - h) Open space as permitted by subdivision regulations and other sections of this ordinance.
 - i) Streets, roads, and other access ways if essential to the productive use of land not so zoned;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.7 - District W, Wetlands Conservation District - Permitted Uses (continued)

- j) Utility rights of way easements including power lines and pipe lines.
- 4. Special Exceptions: Special exceptions for the undertaking of a use not otherwise permitted in the Wetland Conservation District, which may include the erection of a structure; dredging, filling, draining, or otherwise altering the surface configuration of the land, may be granted by the Board of Adjustment, if it can be shown that such proposed use will not conflict with the purpose and intentions of Section 2.02.7(A)(2).

Proper evidence to this effect shall be submitted in writing to the Board of Adjustment and shall be accompanied by the findings of a review by a Certified Wetland Scientist of the environmental effects of such proposed use upon the wetlands in question.

- 5. Incorrectly Designated Soils:
 - a) In the event an area is incorrectly designated as being poorly drained or very poorly drained soils on the Town of Merrimack Wetland Conservation District Map, the Planning Board shall adjust such boundary or area upon submission of the following:
 - 1) A detailed topographic layout of the subdivision and/or area prepared by a registered land surveyor.
 - 2) A revised soils map of the subdivision and/or area prepared by the Soils Conservation Service and/or evidence submitted by a soils scientist qualified in soils classification including a written report of his on-site inspection.
 - 3) The soil boundary as shown on the photo map shall be overlaid on the plat as outlined in Section 4.04 of the subdivision regulations and the newly proposed boundary location shall be indicated on the same plat by a broken line.
 - b) The Planning Board shall reserve the right to withhold action on such plat pending the results of an on-site and/or other investigation by that Board or its appointed agent and shall act to approve or disapprove the final plat within 90 days of submission or such further time as deemed necessary, but not to exceed an additional 90 days.
 - c) The final boundary location shall be confirmed and/or determined by the Planning Board.
 - d) Reference is made to the Soils Redefinition procedure policy statement which may be obtained from the Planning Department.
- 6. Building Setbacks: all buildings or structures for which building permits are required shall be setback a distance of not less than forty (40) feet from any wetland area as defined in this ordinance.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.7 - District W, Wetlands Conservation District - Permitted Uses (continued)

7. Buffer Requirements:

- a) Buffer: a naturally vegetated upland area adjacent to a wetland, more specifically defined as the area within a specified distance from the edge of a wetland.
- b) Applicability: all residential and nonresidential development proposals submitted to the Planning Board for subdivision or nonresidential site plan approval after the effective date of this section (March, 2000) shall provide for a buffer of not less than twenty-five (25) feet from all applicable wetland areas. Applicable wetland areas include all naturally occurring jurisdictional wetlands, as defined herein, with a contiguous area of 3,000 square feet or more, and all jurisdictional wetlands adjacent to any surface water body, river, or stream listed in Section 2.02.12(C) (Shoreland Protection District) of this Ordinance. Upon designation of a wetland buffer area on any plat or plan approved by the Planning Board, said buffer area shall thereafter become a part of the Wetlands Conservation District as defined and described in Section 2.02.7(A).(1) of this ordinance.
- c) Exceptions: the buffer requirement noted above shall not apply to minor lot line adjustments, consolidation plans or voluntary mergers of nonconforming lots not intended for development purposes or for waivers from nonresidential site plan review applications related to changes, alterations or modifications of previously approved, developed sites.

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses

A. Boundaries

The Flood Hazard Conservation (F) District includes all Special Flood Hazard Areas designated by the Federal Emergency Management Agency (FEMA), in its “Flood Insurance Study for the County of Hillsborough, New Hampshire”; with an effective date of September 25, 2009, together with the associated Flood Insurance Rate Maps dated September 25, 2009. Pursuant to RSA 674:56, by resolution of the Merrimack Town Council these documents are adopted by reference and declared to be a part of the Merrimack Zoning Ordinance and Building Code and are hereby incorporated by reference. In all cases where the Flood Hazard Conservation District is super-imposed over another zoning district in the Town of Merrimack, New Hampshire, that district whose regulations are the more restrictive shall apply.

B. Definitions

The following definitions shall apply only to this Floodplain Development Ordinance and shall not be affected by the provisions of any other ordinance of the Town of Merrimack.

- 1. A Zone: (see “Base Flood” and “Area of Special Flood Hazard”)

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.8 - Flood Hazard Conservation District - F. Permitted Uses (continued)

2. Area of Special Flood Hazard: Land in the flood plain within the Town of Merrimack subject to a 1 percent or greater chance of flooding in any given year. The area is designated as Zones A and AE on the Flood Insurance Rate Map.
3. Base Flood (100-year Flood): The flood having a one-percent chance of being equaled or exceeded in any given year.
4. Basement: Any area of a Building having its floor subgrade on all sides.
5. Building: (see Structure.)
6. Development: Any man-made change to improved or unimproved real estate, including but not limited to Buildings or other Structures, mining, dredging, filling, grading, paving, excavation, or drilling operations or storage of equipment or materials.
7. FEMA: The Federal Emergency Management Agency.
8. Flood Elevation Study: An examination, evaluation, and determination of flood hazards and if appropriate, corresponding water surface elevations, or an examination and determination of mudslide or flood-related erosion hazards.
9. Flood or Flooding: means a general and temporary condition of partial or complete inundation of normally dry land areas from:
 - a) the overflow of inland waters.
 - b) the unusual and rapid accumulation or runoff of surface waters from any source.
10. Flood Insurance Rate Map (FIRM): An official map incorporated with this Ordinance, upon which FEMA has delineated both the Special Flood Hazard Areas and the risk premium zones.
11. Flood Insurance Study: (see "Flood Elevation study".)
12. Flood Plain or Flood-prone area: means a land area susceptible to being inundated by water from any source (see definition of "Flood" or "Flooding").
13. Floodproofing: Any combination of structural and non-structural additions, changes, or adjustments to Structures which reduce or eliminate potential flood damage to real estate or improved real property, water and sanitary facilities, structures, and contents.
14. Floodway: (see "Regulatory Floodway").
15. Highest Adjacent Grade: The highest natural elevation of the ground surface prior to construction next to the proposed walls of a Structure.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

16. Historic Structure: Any structure that is:
 - a) Listed individually in the National Register of Historic Places (a listing maintained by the Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register;
 - b) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;
 - c) Individually listed on a state inventory of historic plain states with historic preservation programs which have been approved by the Secretary of the Interior; or
 - d) Individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified either:
 - 1) By an approved state program as determined by the Secretary of the Interior, or
 - 2) Directly by the Secretary of the Interior in states without approved programs.
17. Lowest Floor: The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access or storage in an area other than a basement area is not considered a building's lowest floor; provided, that such an enclosure is not built so as to render the Structure in violation of applicable non-elevation design requirements of this Ordinance.
18. Manufactured Housing/Manufactured Home: Pursuant to RSA 674:31, any Structure, transportable in one or more sections, which in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a Dwelling Unit with or without a permanent foundation when connected to required utilities, which include plumbing, heating, and electrical heating systems contained therein. The terms "mobile home" or "trailer", as these may appear in this *Floodplain* Ordinance, should be understood to mean "manufactured housing" as defined under RSA 21:46. For floodplain management purposes, the term "Manufactured Home" includes park trailers, travel trailers, and other similar vehicles placed on site for greater than 180 consecutive days. This includes Manufactured Homes located in a Manufactured Home Park or Subdivision, which is a parcel (or contiguous parcels) of land divided into two or more Manufactured Home lots for rent or sale.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

19. Mean Sea Level: The National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which Base Flood elevations shown on the community's Flood Insurance Rate Map are referenced.
20. New Construction: For the purposes of determining flood insurance rates, Structures for which the start of construction commenced on or after the effective date of an initial FIRM, or after December 31, 1974, whichever is later, and includes any subsequent improvements to such Structures. For floodplain management purposes, new construction means Structures for which the start of construction commenced on or after the effective date of a floodplain management regulation adopted by the Town of Merrimack and includes any subsequent improvements to such Structures.
21. Person: Includes any individual or group of individuals, corporations, partnership, association, or any other organized group of Persons, including State and local governments and agencies thereof.
22. Recreational Vehicle/Travel Trailer: A vehicle which is: (a) built on a single chassis; (b) 400 square feet or less, when measured at the largest horizontal projection; (c) designed to be selfpropelled or permanently towable by a light duty truck; and (d) designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel or seasonal use.
23. Regulatory Floodway: The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the Base Flood without cumulatively increasing the water surface elevation more than a designated height.
24. Shaded Zone X: Areas of 0.2 percent annual chance of flood; areas of 1 percent annual chance of flood with average depths of less than 1 foot or with drainage areas less than 1 square mile; and areas protected by levees from 1 percent annual chance of flood.
25. Special flood hazard area: (See "Area of Special Flood Hazard").
27. Structure: for floodplain management purposes, a walled and roofed Building, including a gas or liquid storage tank, that is principally above ground, as well as a Manufactured Home.
28. Substantial Damage: Damage of any origin sustained by a Structure whereby the cost of restoring the Structure to its before damaged condition would equal or exceed 50 percent of the market value of the Structure before the damage occurred.
29. Substantial Improvement: Any combination of repairs, reconstruction, alteration, or improvements to a Structure in which the cumulative cost equals or exceeds fifty percent of the market value of the Structure. The market value of the Structure should equal: (a) the appraised value prior to the start of the initial repair or improvement, or (b) in the case of damage, the value of the Structure prior to the damage occurring. For the purposes of this definition, "Substantial Improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the Building commences, whether or not that alteration affects the external dimensions of the structure. This term includes

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Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

Structures which have incurred Substantial Damage, regardless of actual repair work performed. The term does not, however, include any project for improvement of a Structure required to comply with existing health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions or any alteration of a "Historic Structure", provided that the alteration will not preclude the structure's continued designation as a "Historic Structure".

30. Violation: For floodplain management purposes, the word Violation means the failure of a Structure or other Development to be fully compliant with the Town of Merrimack's Flood Hazard Conservation (F) District Ordinance. A Structure or other Development without an elevation certificate, other certifications, or other evidence of compliance required in 44CFR §60.3(b)(5), (c)(4), (c)(10), (d)(3), (e)(2), (e)(4), or (e)(5) is presumed to be in Violation until such time as that documentation is provided.
31. Water surface elevation: The height, in relation to the National Geodetic Vertical Datum (NGVD) of 1929, (or other datum, where specified) of floods of various magnitudes and frequencies in the floodplains.

Part 1 - 100 Year Flood Hazard Area (A Zones)

A. Purpose:

1. To prevent unwise use of lands susceptible to flooding within Special Flood Hazard Areas (100 Year Flood Hazard Areas/A Zones) and to promote sound orderly Development of the Town's resources, and to reduce future flood damage, financial loss, suffering and loss of life.
2. To prevent the Development of residential, commercial and industrial Buildings, and other land uses in Special Flood Hazard Areas which would impede the natural water flow or result in an increase in flood levels during flood periods.
3. To prevent the destruction and inappropriate use of flood-prone land.
4. To prevent unnecessary or excessive expenses on the part of the Town to provide and maintain essential services and utilities which arise because of inharmonious use of lands within Special Flood Hazard Area.
5. To prevent culverting, damming, dredging or obstructing such as to impede or obstruct natural water flow during its maximum flood level.
6. To prevent the building of public facilities such as schools, hospitals, fire, police departments or other similarly related agencies except those necessary for the public health, safety, and welfare, whereupon such uses shall otherwise remain in full conformance with applicable Federal requirements.

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Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

B. Restrictions: 100 YEAR FLOOD HAZARD AREA ("A ZONES")

1. To prohibit New Construction, and to prohibit the use of fill or encroachments within the designated Floodway that would cause any increase in the Base Flood level, except where the effect of flood heights is fully offset by stream improvements.
2. To control filling of those Special Flood Hazard Areas except to prevent additional erosion by use of a suitable material to minimize reoccurrence.
3. To prohibit the removal of soil and other natural objects within Special Flood Hazard Areas or Floodway, except as otherwise permitted in, Paragraph .C. Permitted Use: 100 Year Flood Hazard Area ("A Zones") and Paragraph D. Certification.
4. Existing nonconforming uses in the Floodway shall not be expanded, but may be modified, altered, or repaired to incorporate Flood-Proofing measure, provided such measures do not raise the Base Flood elevation.
5. All industrial chemicals or materials hazardous to public health, welfare, or safety during flood conditions shall be stored in flood proof Structures or above the Base Flood elevation.

C. PERMITTED USES: 100 Year Flood Hazard Area ("A Zones")

Any use that does not result in the erection of any new permanent principle Structure or alter the surface configuration by the removal of soil or addition of fill or dredging and is otherwise permitted by this Zoning Ordinance such as but not limited to:

1. Forestry - Tree Farming;
2. Agriculture;
3. Water impoundments and well supplies;
4. Drainage Ways - streams, creeks, or other paths of normal run-off water;
5. Wildlife Refuge;
6. Parks and such recreation uses as are consistent with the Purpose of this Section;
7. Conservation Areas and nature trails;
8. Open space as permitted by this ordinance;
9. Streets, roads, and other access ways if essential to the productive use of land not so zoned, constructed utilizing methods and practices that minimize or prevent flood damage. Adequate drainage shall be provided to eliminate exposure to flood hazards. Methods employed shall be adequate to withstand flood depths, pressures, velocities, impact and uplift forces;

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Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

10. Utility right of way easements, including power lines and pipe lines, if essential to the productive use of land not so zoned, which shall be located and constructed to minimize or eliminate flood damage. Flood Proofing methods employed shall be adequate to withstand flood depths, pressures, velocities, impact and uplift forces.
11. Along watercourses with a designated Regulatory Floodway no encroachments, including fill, new construction, Substantial Improvements, and other Development are allowed within the Floodway unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practices that the proposed encroachment would not result in any increase in flood levels within the community during the Base Flood discharge.
12. Until a Regulatory Floodway is designated along watercourses, no new construction, Substantial Improvements, or other Development (including fill) shall be permitted within Zone AE on the FIRM, unless it is demonstrated by the applicant that the cumulative effect of the proposed Development, when combined with all existing and anticipated Development, will not increase the Water Surface Elevation of the Base Flood more than one foot at any point within the community.
13. In Zone A the Building Official shall obtain, review, and reasonably utilize any Floodway data available from Federal, State, or other sources as criteria for requiring that all Development meet the following Floodway requirement:

"No encroachments, including fill, New Construction, Substantial Improvements, and other Development are allowed within the Floodway that would result in any increase in flood levels within the community during the Base Flood discharge."

D. CERTIFICATION:

Certification, documented evidence and plans shall be provided by a Licensed Professional Engineer that the proposed encroachments permitted in Paragraphs C.9 and C.10 above shall not result in any increase in flood levels, during occurrence of the Base Flood. Such records and plans shall indicate the specific elevation (in relation to mean sea level) at which such permitted uses have been designed and Flood Proofed. Such records shall be maintained with the office of the Building Official.

E. BUILDING PERMITS - 100 YEAR FLOOD HAZARD AREA ("A ZONES")

1. All proposed Development in any Special Flood Hazard Area shall require a Permit. Building Permit applications for proposed construction or other Substantial Improvements shall be reviewed by the Zoning Administrator and the Building Official, or their designated representatives, prior to the issuance of such a Permit to assure that:
 - a) Proposed repair, uses of construction materials and utility equipment are resistant to flood damage and uses, construction methods and practices that will minimize flood damages, and that all Substantial Improvements constructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities shall be designated and/or located so as to prevent water from entering or accumulating within the components during conditions or flooding.

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Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

- b) The applicant(s) shall certify to the Building Official that all necessary permits have been obtained from those government agencies from which approval is required by federal or State Law.
- c) New and replacement water supply and/or sanitary sewage systems are designed to minimize or eliminate infiltration of flood waters into the systems and discharge from the systems into flood waters. On-site waste disposal systems must be located to avoid impairment to them or contamination from them during flooding.
- d) Certification is provided by a Licensed Professional Engineer, assuring that the flood carrying capacity of an altered or relocated watercourse can and will be maintained.
- e) Proposed building sites will be reasonably safe from Flooding. If a proposed Building site is in a location that has a flood hazard, any proposed New Construction or Substantial Improvement (including prefabricated and mobile homes) must be designed (or modified) and anchored to prevent floatation, collapse, or lateral movement of the structure, and, if in the A Zone, Manufactured Homes must be anchored and elevated on a permanent foundation.
- f) In special flood hazard areas the Building Official shall determine the 100- year flood elevation in the following order of precedence according to the data available:
 - 1) In Zone AE, refer to the elevation data provided in the community's Flood Insurance Study and accompanying FIRM.
 - 2) In Zone A the Building Official shall obtain, review, and reasonably utilize any 100-year flood elevation data available from any federal, state or other source including data submitted for development proposals submitted to the community (i.e. subdivisions, site approvals).
- g) The Building Official's 100-year flood elevation determination will be used as criteria for requiring in Zones A and AE that:
 - 1) All new construction or substantial improvement of residential structures have the lowest floor (including basement) elevated to or above the 100-year flood elevation.
 - 2) That all new construction or substantial improvements of non-residential structures have the lowest floor (including basement) elevated to or above the 100-year flood level; or together with attendant utility and sanitary facilities, shall:
 - a) be floodproofed so that below the 100-year flood elevation the structure is watertight with walls substantially impermeable to the passage of water;

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.8 - Flood Hazard Conservation District - F, Permitted Uses (continued)

- b) have structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy; and
 - c) be certified by a registered professional engineer or architect that the design and methods of construction are in accordance with accepted standards of practice for meeting the provisions of this section.
- 3) All manufactured homes to be placed or substantially improved within special flood hazard areas shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is at or above the base flood level; and be securely anchored to resist floatation, collapse, or lateral movement. Methods of anchoring may include, but are not limited to, use of over-the-top or frame ties to ground anchors.
- 4) All recreational vehicles placed on sites within Zones A and AE shall either:
- a) be on the site for fewer than 180 consecutive days;
 - b) be fully licensed and ready for highway use; or
 - c) meet all standards of Section 60.3 (b) (1) of the National Flood Insurance Program Regulations and the elevation and anchoring requirements for "manufactured homes" in Paragraph (c) (6) of Section 60.3.
- 5) For all new construction or substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding are permitted provided they meet the following requirements:
- a) the enclosed area is unfinished or flood resistant, usable solely for the parking of vehicles, building access or storage;
 - b) the area is not a basement;
 - c) shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwater. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other coverings or devices provided that they permit the automatic entry and exit of floodwater.

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Section 2.02.8 - Flood Hazard Conservation District - F. Permitted Uses (continued)

2. Sanctions:

Any Person, firm, or corporation violating the provision of this Floodplain Ordinance shall be subject to the provisions of Section 10 Penalties & Violations of the Merrimack Zoning Ordinance and Building Code, and each day's neglect to obtain such a Permit shall constitute a separate offense.

3. The Building Official shall:

Obtain and maintain a record for the determination of applicable flood insurance risk premium rates within all areas having flood hazard identified within the "A Zones" of the Flood Insurance Rate Map, any certificates of Flood-Proofing, and information on the elevation (in relation to mean sea level) of the level of lowest floor (including basement), of all new or substantially improved Structures, and include whether or not such Structures contain a basement, and if the Structure has been Flood Proofed, including also the elevation (in relation to mean sea level) to which the Structure was Flood Proofed. This information shall be furnished by the applicant.

In riverine situations, prior to the alteration or relocation of a watercourse, the applicant for such authorization shall notify the Wetlands Bureau of the New Hampshire Department of Environmental Services and submit copies of such notification to the Building Official, in addition to the copies required by RSA 482-A:3. Further, the applicant shall be required to submit copies of said notification to those adjacent communities as determined by the Building Official, including notice of all scheduled hearings before the Wetlands Bureau.

PART 2 – 500 YEAR FLOOD HAZARD AREA (Shaded ZONE X")

A. Purpose:

To prevent unwise use of lands susceptible to flooding within Shaded Zone X areas; to promote sound and orderly Development of the Town's land resources; and to reduce future flood damage, financial loss, and undue suffering.

B. Restrictions:

1. To restrict and regulate the Development of residential, commercial and industrial Buildings, and other land uses in Shaded Zone X areas which could impede the flow of water during flood periods.
2. To prevent the destruction and inappropriate use of flood - prone land within Shaded Zone X areas.
3. To prevent unnecessary or excessive public expenditures to provide and maintain essential services and utilities which arise because of inharmonious use of land within these areas.
4. To control the removal of soil and other natural objects in Shaded Zone X areas, except those which are incidental to and in connection with the construction of a Building.

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Section 2.02.8 - Flood Hazard Conservation District - F. Permitted Uses (continued)

5. To prevent culverting, damming or obstructing so as to impede or obstruct water flow, or result in an increase in flood elevation during flood periods.
6. To control filling of those Flood Hazard Areas, except to prevent additional erosion by use of a suitable material to minimize reoccurrence.
7. To control filling or encroachments within designated Shaded Zone X areas that would impair their ability to carry and discharge the water, except where the effect of flood elevations are fully offset by stream improvements; incidental to, and in connection with, the construction of a Building or other Development of land.
8. All industrial chemicals or materials hazardous to public health, welfare, or safety during flood conditions shall be stored in flood proof Structures or at elevations higher than the 500 year flood elevation shown in the flood profiles of the Flood Insurance Study.

C. Permitted Uses – (Shaded Zone X)

Any use, which is otherwise permitted in conformance with this Ordinance, which does not result in altering the surface configuration by the addition of fill or dredging, except as may be otherwise permitted in this Section.

1. All subdivision proposals and other proposed new Developments within Shaded Zone X areas shall be reviewed by the Planning Board and shall conform to the provisions of this Ordinance and the Subdivision Regulations of the Town of Merrimack to assure:
 - a) All such proposals are consistent with the need to minimize flood damage. Include with such proposals Base Flood Elevation Data.
 - b) All plans for public utilities and facilities such as sewer, gas, electrical, or water systems are located or elevated and constructed to minimize or eliminate flood damage.
 - c) Adequate drainage is provided so as to reduce exposure to flood hazards.
 - d) New or replacement water supply systems and/or sanitary sewer systems shall be designated to minimize or eliminate infiltration of flood waters into the system and discharges from the system into the flood waters. On-site waste disposal systems shall be so located so as to avoid impairment of them or contamination from them during flooding.
 - e) Residential, commercial and industrial Structures so located within Shaded Zone X areas, shall be constructed of such that the lowest floor (including basement) must be Flood Proofed with walls substantially impermeable to the passage of water and capable of resisting hydrostatic loads, or shall not be located below the maximum elevation of the flood level.
 - f) Streets, roads and other access ways shall be constructed utilizing methods and practices adequate to withstand flood depths, pressures, velocities, impact and uplift forces.

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Section 2.02.8 - Flood Hazard Conservation District - F. Permitted Uses (continued)

- g) Down stream improvements: When a proposed use is determined to adversely impact or affect down stream lands, facilities, or Structures either public or private, the Planning Board shall exercise the right to require that down stream improvements shall be made and/or require that all necessary deeded easements be secured.

D. Certification:

The Planning Board shall require written certification supported by sufficient data by a Licensed Professional Engineer that the uses permitted in Shaded Zone X areas are in conformance with the provisions of this Ordinance and to insure that no adverse impacts downstream shall occur.

Part 3 - Variances

- A. Variances for undertaking of uses not otherwise permitted within Special Flood Hazard Areas (A Zones) may be granted by the Zoning Board of Adjustment if each of the following can be demonstrated:
 - 1. Meet those general variance criteria ; set forth in Section 8.09
 - 2. The granting of the Variance will not result in increased flood elevations, additional threats to public safety, extraordinary public expense, nuisance, cause fraud upon or victimization of the public, or conflict with other local Laws and Ordinances.
- B. Variances shall not be issued within a Special Flood Hazard Area if an increase in flood elevations will result during the Base Flood.
- C. Variances may be issued for New Construction and Substantial Improvements on an existing lot of ½ acre or less in area contiguous to and surrounded by lots with existing Structures constructed below the Base Flood Elevation, in conformance with procedures outlined with this Section.
- D. Variances shall be issued only upon a determination by the Zoning Board of Adjustment, that the Variance requested is the minimum necessary, considering the flood hazard, to afford relief.
- E. That the requirements of RSA 674:33 shall be fulfilled.
- F. The Chairman of the Zoning Board of Adjustment, in any instance where a Variance of the Ordinance may be granted shall, on behalf of the community, notify the applicant in writing that issuance of the Variance to construct a Structure below the Base Flood elevation may result in increased premium rates for flood insurance; and such construction may cause risk to life and property. Such notification shall be maintained with a record of all Variance actions.

2.02.9 - Elderly Zoning District - E, Permitted Uses, Standards

- A. Purpose: The regulations in this section have been established for the purpose of encouraging the construction of housing suitable for the occupancy by elderly persons including congregate care, nursing home and other assisted living facilities, while ensuring compliance with local planning standards, land use policies, good building design and the requirements for the health, safety and

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

2.02.9 - Elderly Zoning District - E, Permitted Uses, Standards (continued)

general welfare of the inhabitants of the Town.

- B. General Standards: Except as otherwise provided for in this section, all housing for the elderly shall conform to the following standards:
1. Dwelling units shall require public sewage and public water.
 2. Dwelling unit density shall not be greater than 8 dwelling units per actual acre (43,560 square feet).
 3. Each dwelling unit shall have no more than two bedrooms, and shall be specifically designed for occupancy by the elderly providing for such things as emergency lighting, exits, fire safety equipment, and adequate structural design features to permit handicapped accessibility such as handicap ramps, etc.
 4. Housing developments for the elderly shall be exempt from the provisions of Section 3.02. Table of Lot and Yard Regulations.
 5. The occupancy of units within the development shall be limited to family units in which the head of household or spouse is at least 55 years old.
 6. The minimum tract area shall be three (3) acres and the tract shall have at least 100 feet of frontage on a public road.
 7. The design and site layout of the development shall maximize the privacy of the dwelling units, preserve the natural character of land where feasible, provide for the appropriate separation of parking and living areas as determined by the specific use, and consider such factors as orientation, energy usage, view, etc.
 8. The development shall, where possible, make provision for on or off-site pedestrian access to the various community facilities in the Town Center.
 9. Housing for the elderly shall be exempted from the minimum floor area requirement found in Section 11.06 of the Zoning Ordinance. The minimum floor area requirement for housing for the elderly shall be 400 square feet.
 10. The development shall be landscaped so as to enhance its compatibility with the Town with emphasis given to the use of existing natural features where possible.
 11. Emergency vehicle access shall be provided to all structures within the elderly zoning district.
 12. Nursing home and other assisted living facilities that do not provide for separate individual dwelling units are exempt from the density requirements of subsection 2, above.
 13. Nursing home and other assisted living facilities may be occupied by sick, injured, disabled or terminally ill individuals.

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2.02.9 - Elderly Zoning District - E, Permitted Uses, Standards (continued)

C. Procedure and Criteria:

The procedure and criteria for reviewing application for housing developments for the elderly shall follow the provisions of the Town of Merrimack Subdivision Regulations Section 4.06 Final Plat.

1. The Planning Board shall review all applications for housing developments for the elderly according to the above procedures and approve or disapprove such applications and require such covenants or legal restrictions they deem necessary to insure the intent of the ordinance.
2. Submission of the proposal along with abutting property owners' names and addresses shall be in accordance with the Town of Merrimack Subdivision Regulations in order to provide for timely notification to abutters of public hearing to review said proposal.
3. A Performance Bond and other legal data shall be submitted as required by the Planning Board to insure the completion of streets, buffers, and amenities in accordance with the accepted plans and the subdivision regulations of the Town of Merrimack as adopted or hereafter amended.

D. Definitions

1. Assisted Living Facility: residential facilities that provide communal life-care support facilities and services that may include housekeeping, medical services, recreation, social activities, social services, transportation and other similar support services and facilities.
2. Congregate Care Facility: a residential facility for occupancy by elderly couples or individuals that provides for individual dwelling units with facilities and services that may include housekeeping, meals, limited medical/nursing care, recreation, social activities and other similar services.
3. Nursing Home: a residential health-care facility that provides nursing, medical and custodial care for individuals who for reasons of advanced age, chronic illness, injury or disability are unable to care for themselves.

2.02.10 - Planned Residential District - PRD, - Permitted Uses

- A. Planned Residential Development is intended to provide an opportunity for higher density residential development in areas served by public water and public sewer and with good highway access. Planned residential development may include compatible non-residential development.
- B. This district is established to encourage the establishment of Planning Unit Developments (PUD) on lots meeting the requirements established in Section 15 of this ordinance.
- C. Where lot size is not sufficient to meet the requirements for Planning Unit Development the land may be developed in accordance with the underlying zone shown on the Zoning Map.
- D. See Section 15 of this ordinance for further information regarding permitted uses and standards.

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2.02.11 - Aquifer Conservation District - A

- A. **Purpose:** The Aquifer Conservation District is created to protect, preserve and maintain the existing potential groundwater supply and recharge areas within known aquifer and wellhead areas from adverse impacts that may result from inappropriate development or land use practices.
- B. **Location:** The Aquifer Conservation District includes those areas shown on the Map entitled Town of Merrimack Aquifer Conservation District, dated December 1996 prepared by the Nashua Regional Planning Commission based upon the Department of Interior U.S. Geological Survey study entitled Hydrology of Stratified-Drift Aquifers and Water Quality in the Nashua Regional Planning Commission Area, South Central New Hampshire, 1987, and on the Map entitled Surficial Geology and Wellhead Protection Areas Delineated for Merrimack Village District Wells MVD-1 Through MVD-7, dated January 1996, prepared by Emery & Garrett Groundwater, Inc. The Aquifer Conservation District is subdivided into two areas:
1. Wellhead Protection Areas.
 2. Balance of the Aquifer District.

The Aquifer Conservation District maps are hereby declared to be a part of this ordinance and are incorporated by reference.

C. **Definitions:**

1. **Aquifer:** Areas of permeable deposits of rock or sand and gravel containing significant amounts of potentially recoverable water whereby a combination of transmissivity, saturated thickness and specific capacity the area can be expected to yield at least 200 gallons per minute to a large diameter well.
2. **Hazardous Waste:** Shall be as defined in the N.H. Code of Administrative Rules Chapter He-p 1901.03 (v).
3. **Impervious:** The quality of any material or structure which substantially restricts the penetration of surface water or rainfall into the soil.
4. **Leachable Wastes:** Waste materials including without limitation solids, sewage sludge and agricultural residue which may release water-borne contaminants to the surrounding environment.
5. **Mining of Land:** The removal or relocation of geological materials for the purpose of extracting topsoil, sand or gravel, metallic ores or bedrock.
6. **Process Waters:** Liquids used in cooling or in the manufacturing process which contact raw materials, products, wastes or machinery and which because of that contact contain toxic or hazardous substances or do not meet State and Federal drinking water standards.
7. **Radioactive Material:** Any of the materials which have a concentration which exceeds the limits set forth in Appendix B, Table II or 10 CFR Part 20 (Standards for Protection Against Radiation).
8. **Recharge Area:** Areas of the permeable deposits which are hydraulically connected to

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

Section 2.02.11 - Aquifer Conservation District - A (continued)

and up gradient of aquifer areas.

9. Solid Waste: Useless, unwanted, or discarded material with insufficient liquid content to be free flowing, including, without limitation, rubbish, garbage, scrap materials, junk, refuse, inert fill material and landscape refuse.
10. Toxic or Hazardous Materials: Shall be defined in the N.H. Code of Administrative Rules Chapter He-p 1901.03 (v).

D. **Permitted Uses:**

The uses permitted in the Aquifer Conservation District shall in all cases be subject to the zoning regulations of the Town of Merrimack as defined in Sections 1 through 18 of this ordinance. In cases of conflict between permitted uses of this district and permitted defined elsewhere in this ordinance, the more restrictive use shall apply.

1. Permitted Uses, All Areas:
 - a) All uses permitted in the underlying zoning district except as specifically restricted or prohibited herein.
 - b) Farming, commercial gardening, nursery, forestry, harvesting and grazing in accordance with all applicable chapters of RSA title XL and best management practices developed, administered and enforced by the New Hampshire Department of Agriculture, Markets and Food.
2. Prohibited Uses, Wellhead Protection Areas: The following uses shall not be permitted in Wellhead Protection Areas:
 - a) Disposal of solid waste.
 - b) Subsurface storage of petroleum and other refined petroleum products within one thousand feet (1000') of an existing municipal well, however, subsurface storage of petroleum and other refined petroleum products is permitted in locations more than one thousand feet (1000') from an existing municipal well provided that such storage is in containment with suitable secondary barriers and with automatic alarm systems.
 - c) Disposal of liquid or leachable wastes except one or two family residential subsurface disposal systems or equivalent domestic waste water disposal system.
 - d) Industrial uses which discharge contact type process waters on site. Non-contact cooling water is permitted.
 - e) Use of outside un-enclosed storage of road salt.
 - f) Dumping of snow containing deicing chemicals brought from outside the Wellhead Protection Areas.

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Section 2.02.11 - Aquifer Conservation District - A (continued)

- g) Commercial animal feedlots.
 - h) Mining of land except incidental to a permitted use.
 - i) On site disposal or processing for recycling of hazardous or toxic materials.
 - j) Junk and salvage yards.
 - k) Bulk storage of toxic material for resale or distribution.
 - l) The siting or operation of a wastewater or septage lagoon.
 - m) Gasoline and automobile service stations, including auto body repair.
 - n) Sale, storage, lease, or rental of used and new cars or other motorized vehicles.
3. Regulated Uses, All Aquifer Areas: The following uses shall be permitted in Aquifer Areas only in accordance with the Standards for Development in the Aquifer Conservation District adopted by the Merrimack Planning Board in accordance with N.H.R.S.A.674:35 through 674:44 and 675:6 through 676:9 which pertains to the Planning Board's authority and responsibilities.
- a) Storage of petroleum and other refined petroleum products and regulated substances in reportable quantities.
 - b) Heliports and airports, including aircraft fueling, deicing and maintenance.
 - c) Recharge of surface runoff water into the aquifer.
 - d) Dumping of snow containing deicing chemicals brought from outside the Aquifer area.
 - e) Commercial animal feedlots.
 - f) Mining of land other than incidental to a permitted uses.
 - g) Automotive service and repair shops, junk and salvage yards.
 - h) Bulk storage of toxic materials for resale or distribution.
 - i) Underground brush and stump dumps.
 - j) Trucking and bus terminals.
 - k) Car Washes.
 - l) Metalworking shops including but not limited to machine shops, metal plating, heat treating, smelting and jewelry making shops.

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Section 2.02.11 - Aquifer Conservation District - A (continued)

- m) Siting or operation of wastewater septage lagoon.

E. Administration:

All subdivision proposals, site plan applications, or any change of use, alterations or expansion of an existing use, uses and changes in use within the Aquifer Conservation District shall be reviewed by the Planning Board and shall conform to the provisions of this ordinance and other applicable regulations of the Town of Merrimack and further shall assure that:

1. All such proposals are consistent with the need to protect the groundwater of the Town of Merrimack and adjacent communities.
2. All sanitary sewer systems are designed to minimize or eliminate leakage or discharges from the system into the groundwater.
3. On site waste disposal systems are located so as to avoid or minimize groundwater contamination.
4. Streets, roads, and parking areas are constructed so that direct application of road salt is not required for winter safety, and so that runoff from such uses is channeled to avoid or minimize groundwater contamination.
5. Written approval of the State of New Hampshire Water Supply and Pollution Control Commission has been obtained where applicable.

F. Conservation Commission Review: The Conservation Commission shall review, within a reasonable time, each plan for development in the Aquifer Conservation District relative to the potential impact of such development plans on the Town's groundwater resources in accordance with the Town's Standards for Development in the Aquifer Conservation District and may make a recommendation to the Planning Board to approve, approve with conditions and/or recommendations, or disapprove the plan, with reasons for disapproval.

G. Merrimack Village District Review: The Merrimack Village District, its agent or designee shall review, within a reasonable time, each plan for development within the Wellhead Protection Areas of the Aquifer Conservation District relative to the potential impact of such development plans on the Town's public water supply in accordance with the Town's Standards for Development in the Aquifer Conservation District and may make a recommendation to the Planning Board to approve, approve with conditions and/or recommendations, or disapprove the plan, with reasons for disapproval.

H. Incorrectly Designated Zones: When the actual boundary of the Aquifer Conservation District is in dispute by any owner or abutter actually affected by said boundary, the Planning Board, at the owner/abutter's expense and request, may engage a professional geologist or hydrologist to determine more accurately the precise boundary of said Aquifer Conservation District, and shall submit to the Planning Board his findings, including:

1. A detailed topographic layout of the subdivision and/or area to be developed prepared by a registered land surveyor.

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Section 2.02.11 - Aquifer Conservation District - A (continued)

2. A revised soils map of the subdivision and/or area prepared by a soils scientist qualified in hydrologic studies including a written report of his on-site field inspection and test boring data.
3. The aquifer boundary as shown on the Town of Merrimack Aquifer Conservation District Map shall be overlaid on the plat as outlined in Section 4.04 of the subdivision regulations and the newly proposed boundary location shall be indicated on the same plat by a broken line.

The Planning Board may adjust the boundary or area designation based thereon.

The precise boundary of said Aquifer Conservation District shall be as determined by the Planning Board.

2.02.12 - Shoreland Protection District - SP

The Town of Merrimack hereby declares that it will enforce the New Hampshire Minimum Shoreland Protection Standards as defined by RSA 483-B:9.

A. Authority

This ordinance is adopted pursuant to RSA 674:16 and in accordance with RSA 483-B:8 (Shoreland Protection Act).

B. Purpose

The conservation of shorelands adjacent to public waters within the town of Merrimack, and other surface waters as specified herein, is essential for the protection of town's drinking water supply, wildlife habitats, recreational resources and the natural and scenic beauty of the town. This ordinance is intended to establish minimum standards for the use, subdivision and development of shorelands adjacent to such surface waters for the purpose of minimizing or eliminating potential threats to these water resources due to non-point pollutant sources, erosion and sedimentation, flooding and inappropriate development or redevelopment.

C. Location

The Shoreland Protection District is an overlay district that includes all land located within two-hundred and fifty (250) feet of the reference line of the following surface waters and water ways and all areas within the one-hundred (100) year floodplain adjacent to said surface waters and water ways. The terms "surface waters" and "waterways" as used herein are those surface waters and waterways as identified by New Hampshire Administrative Rule ENV-Wq 1401.02 (a)-(e) and include, but are not necessarily limited to, the following:

1. Baboosic Brook
2. Baboosic Lake
3. Bowers Pond

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2.02.12 - Shoreland Protection District - SP (Continued)

4. Greens Pond
5. Harris Pond
6. Holts Pond
7. Horseshoe Pond
8. Merrimack River
9. Naticook Lake
10. Pennichuck Brook
11. Pennichuck Pond
12. Retention Pond B
13. Souhegan River
14. Stump Pond
15. Supply Pond

The above list of applicable water bodies and watercourses is provided for illustrative purposes only. If there is a conflict between the list contained herein and the jurisdictional waters and waterways defined by the above-referenced Administrative Rule, the above-referenced Administrative Rule shall control.

D. NH DES Approval Required

Any Subdivision or Site Plan, which takes place wholly or partially in the Shoreland Protection District, shall obtain approval from the New Hampshire Department of Environmental Services (NH DES) in accordance with NH RSA 483-B. This approval shall be obtained prior to final approval of the subdivision or site plan by the Planning Board. Prior to making application to the NH DES for a permit, applicants are encouraged to hold a Pre-Submission Hearing with the Planning Board.

Section 2.02.13 - TOWN CENTER OVERLAY DISTRICT

- A. Purpose: To create a Town Center Overlay Zoning District intended to implement the overall goals of the Town Center Plan by encouraging an appropriate mixture of land uses, transportation corridor, and forms of development.
- B. Boundaries: The Boundaries of the Town Center Overlay District are defined on the Zoning Map which is hereby incorporated by reference.
- C. Permitted Uses: All uses permitted in any underlying zone except as specifically provided for or prohibited herein.
 1. Notwithstanding any contrary use provisions in any underlying zoning district, residential uses are permitted anywhere within the Town Center Overlay District.
- D. Special Exceptions:
 1. Notwithstanding any contrary provisions in any underlying zoning district, the Zoning Board of Adjustment may grant a special exception for the following uses of land anywhere within the Town Center Overlay District:

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Section 2.02.13 – Town Center Overlay District (continued)

- a) preschools, nursery schools, kindergarten, primary or secondary schools, technical or trade schools and institutions of higher learning;
- b) day care centers;
- c) professional offices including medical, dental, legal, architectural, engineering real estate, accounting, insurance services and related services or facilities;
- d) churches, temples, synagogues, mosques and other houses of worship and related facilities and services, and
- e) meeting halls or lodges and related accessory facilities for private membership clubs, fraternal organizations, unions, professional associations and other similar organizations.

Provided that the following conditions are met:

- a) the site is an appropriate location for the proposed use in accordance with the Town Center Plan;
- b) the proposed use would not result in significantly increased hazards to vehicles or pedestrians by way of traffic congestion, ingress or egress;
- c) the proposed use would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight or other nuisance, and
- d) the proposed use is designed in harmony with the overall goals of the Town Center Plan with respect to building, transportation corridor, and site design and arrangement.

Note: The granting of a special exception based upon the above noted conditions does not negate, supersede or substitute for any necessary approvals or applicable regulations required under the Planning Board's Subdivisions and Nonresidential Site Plan Review Regulations.

- 2. A special exception from the Zoning Board of Adjustment is required for the following uses of land within the Town Center Overlay District in accordance with the criteria outlined in Section 2.02.13 D, above, provided that the proposed use is a permitted use in the underlying zoning district:

- a) automotive service and repair facilities;
- b) gas stations;
- c) drive-through food service establishments;
- d) new or used vehicle dealerships;
- e) freight & trucking terminals;

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Section 2.02.13 – Town Center Overlay District (continued)

- f) contractors yards;
 - g) fuel storage and distribution (bulk).
- E. Dimensional Requirements: Notwithstanding the dimensional requirements contained in Section 3.02 of the zoning ordinance, the following dimensional requirements shall apply to buildings for any use or combination of uses permitted in the Town Center Overlay District.
- 1. Minimum Lot Area - Existing Lots: any existing lot of record may be used for any use or combination of uses permitted within the Town Center Overlay District provided that all other applicable requirements are adhered to.
 - 2. Minimum Lot Area - New Lots: 20,000 square feet.
 - 3. Frontage: 125 feet.
 - 4. Setbacks - Buildings:
 - a) Front Yard - 30 feet.
 - b) Side Yard - 15 feet.
 - c) Rear Yard - 40 feet.
 - d) Lot Depth - 125 feet.
 - 5. Setbacks - Other:
 - a) no site improvements, except for access ways, parking areas, fencing, ground signs, utility lines, landscaping and lighting fixtures may be located within required front yard setbacks as established under E, 4 (a) above;
 - b) ground signs shall be setback not less than 10 feet from the front property line.
 - 6. Special Exceptions: The Zoning Board of Adjustment may grant a special exception for additions, alterations or improvements to existing buildings or sites that do not conform to the minimum dimensional requirements set forth in this section where it can be shown that the proposed additions, alterations or improvements:
 - a) would serve to promote the reuse, restoration, rehabilitation or otherwise enhance an historic building or structure or any other potentially historic building or structure identified in the *Historic Resources Inventory* component of the *Town Center Plan*;
 - b) are for a use currently permitted within the Town Center Overlay District;
 - c) would not result in significantly increased hazards to vehicles or pedestrians or impair or impede emergency vehicle access or the provision of emergency

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Section 2.02.13 – Town Center Overlay District (continued)

services or the planned improvements to the transportation corridor;

- d) would not result in unreasonable impacts to abutting properties by way of increased noise, odor, visual blight or other nuisance;
- e) would serve to enhance the overall goals of the Town Center Plan, and
- f) adequate provisions for parking and other necessary support facilities are provided.

Note: The granting of a special exception based upon the above noted conditions does not negate, supersede or substitute for any necessary approvals or applicable regulations required under the Planning Board's Subdivisions and Nonresidential Site Plan Review Regulations.

F. Residential Density Calculations

- 1. Where residential development is proposed in accordance with the requirements of Sections 3.02, 3.08 or 15 of the Zoning Ordinance, the following types of land may be used to satisfy minimum density or open space requirements:
 - a) on-site open space, recreation or conservation land;
 - b) lot yard areas or common areas, including private streets or ways and parking areas, and
 - c) off-site conservation/recreation land, subject to Planning Board approval, within parcels specifically proposed to be dedicated to conservation and/or recreational use in the Town Center Plan.

Zosctn

SECTION 13 - ADOPTION & AMENDMENTS

13.01 - Adoption

The provisions of this ordinance may be amended or changed per the provisions of the Merrimack Town Charter, as most recently amended.

Approved June 29, 1953	Amended May 13, 1986
Amended March 9, 1954	Amended May 12, 1987
Amended March 12, 1957	Amended May 10, 1988
Amended March 14, 1961	Amended May 9, 1989
Amended October 16, 1961	Amended May 8, 1990
Amended November 10, 1964	Amended May 14, 1991
Amended September 13, 1966	Amended May 12, 1992
Amended March 12, 1968	Amended May 10, 1994
Amended March 9, 1971	Amended May 9, 1995
Amended November 7, 1972	Amended May 14, 1996
Amended March 6, 1973	Amended April 8, 1997
Amended March 5, 1974	Amended March 10, 1998
Amended November 5, 1974	Amended March 9, 1999
Amended March 4, 1975	Amended March 14, 2000
Amended November 25, 1975	Amended April 10, 2001
Amended March 12, 1976	Amended April 9, 2002
Amended March 8, 1977	Amended April 8, 2003
Amended March 14, 1978	Amended April 13, 2004
Amended March 13, 1979	Amended April 12, 2005
Amended May 13, 1980	Amended April 11, 2006
Amended May 12, 1981	Amended November 6, 2008
Amended May 11, 1982	Amended August 27, 2009
Amended November 2, 1982	Amended February 11, 2010
Amended March 22, 1983	Amended September 11, 2014
Amended May 10, 1983	Amended May 14, 2015
Amended May 8, 1984	Amended September 10, 2015
Amended May 14, 1985	Amended October 27, 2016

13.02 - Authority to assign section numbers

The Planning Board has the authority to assign such section numbers to the Zoning Ordinance and Building Code as it may deem appropriate provided that no substantive change to the ordinance shall occur as a result of this renumbering.

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SECTION 17 - SIGNS [revised October 27, 2016]

17.01 - Purpose

The purpose of this article is to encourage the effective use of signage to direct movement, advertise, and inform the public while protecting public safety, preserving neighborhood character and minimizing visual clutter.

17.02 - Severability

If any part of this section, subsection, sentence, clause, or phrase is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have adopted the Ordinance in each section, subsection, sentence, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.0

17.03 - Governmental Signs, Signs Required By Law and Flags

Nothing in this section shall prevent the erection, location or construction of signs on private property where such erection, construction or location is required by any law or ordinance enacted by the local, state or federal governments, nor shall any village district or municipally operated utility be prohibited from erecting signs on private property when otherwise permitted. This ordinance does not regulate flags of National, State, Local or historical significance.

17.04 - Permit Required

No sign shall be erected or affixed to any building exterior or placed freestanding on any parcel or altered or moved, without a permit issued by the Building Official and approved by Planning/Zoning Administrator except as otherwise exempted in this ordinance. Signs containing *noncommercial speech* are permitted anywhere that advertising or business signs are permitted, subject to the same regulations applicable to such signs.

17.05 - Definitions

The following definitions shall apply throughout these regulations.

1. *Awning*: a removable shelter of canvas, plastic, metal or some other material, extending over a doorway or window and providing shelter from rain or sun.
2. *Awning Sign*: a sign affixed to the surface of an awning but not extending above below or beyond the awning surface.
3. *Banner Sign*: a temporary sign of lightweight material (paper, plastic or fabric) hung either with or without frames. Flags and insignias containing only markings of any government, corporation or business are not considered to be banners.

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Section 17.05 - Definitions (continued)

4. *Building Face or Wall*: all window and wall area of a building in one plane or elevation.
5. *Changeable Copy Sign*: a sign on which message copy can be changed through use of attachable letters and numerals excluding electronic switching of lamps or illuminated tubes to form words and numerals. *Changeable copy sign* includes a sign which has automatic switching, limited to time and temperature.
6. *Construction or Project Sign*: a sign erected on a project site prior to or during a construction project.
7. *Directional Sign*: a sign identifying site locations, entrances, exits, parking areas, loading areas, or other messages necessary to direct vehicles or pedestrians to, through or within a site.
8. *Directory Sign*: a sign which identifies or locates the occupants of a building or site.
9. *Electrical Sign*: a sign containing or attached to electrical wiring.
10. *Flashing*: a pattern of changing light illumination where the sign illumination alternates between illuminated and non-illuminated.
11. *Flashing Sign*: a sign containing an intermittent flashing light by means of animation or an externally mounted intermittent light source.
12. *Ground Sign*: a sign erected on a freestanding frame, mast or pole that is not attached to any building.
13. *Illuminated Sign*: a sign lit with either an internal or external artificial light source.
14. *LED*: a Light-Emitting Diode is a semiconductor diode that emits light when a voltage is applied to it.
15. *Marquee*: a permanent roof-like shelter extending from part or all of a building face over a public-right-of-way, and constructed of some durable material such as metal, glass or plastic.
16. *Mobile Signs*: a sign mounted on wheels or a wheeled trailer primarily situated and decorated to display an advertising message.
17. *Nameplate*: a non-electric sign identifying only the name and occupation or profession of the occupant of parcel on which the sign is located. If any parcel includes more than one occupant, nameplate means all names and occupations or professions as well as the name of the building and directional information.

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Section 17.05 - Definitions (continued)

18. *Nit*: a unit of visible-light intensity that is used to describe the brightness of a display; one nit is equal to one candela per square meter (cd/m²). For an LED display it is calculated as the following: nit = candela per pixel times pixels per square meter.
19. *Non-commercial Speech*: Any form of speech conducted for personal use or enjoyment without the intent of realizing a profit or recovering costs through the sale of goods or services.
20. *Off-Premise Sign*: a sign visible from a public right of way identifying or advertising a business, person, activity, goods, products or services not located on the parcel where the sign is installed and maintained.
21. *On-Premise Sign*: a sign visible from a public right of way identifying or advertising a business, person, activity, goods, products or services located on the parcel where the sign is installed and maintained.
22. *Premise*: a lot or number of lots on which are situated a building, or group of buildings designed as a unit, or on which a building or a group of buildings are to be constructed.
23. *Projecting Sign*: a sign, other than a wall sign, which is attached to, and projects more than eighteen inches from a building face or wall.
24. *Real Estate Directional Signs*: real estate signs advertising an open house and located off premises.
25. *Real Estate Sign*: a sign advertising exclusively the sale, rental, or lease of the premises, or a portion thereof, upon which the sign is located. Such sign must be removed within fifteen days after the closing of sale, rental or lease.
26. *Roof Sign*: a sign erected upon, against or directly above a roof, or on the top of or above the parapet of a building.
27. *Rotating Sign*: a sign, or portion of a sign, which moves in a revolving manner.
28. *Scrolling Graphics*: a mode of message transition on an electronic message display sign where the message appears to move across the display surface.
29. *Sign*: a permanent or temporary structure, device, two or three dimensional object or any combination of words, letters, figures, lights, designs, pictures, insignias, emblems, logos, banners, pennants or flags visible to the public from the outside of a building that conveys a message to the public in order to advertise, inform, identify, direct, invite or draw attention to any business, goods, products, facilities, services, activities or events that are available, provided or conducted on or off the premises. "Sign" includes any permanently installed and prominently displayed merchandise and for the purpose of removal also includes the sign structure.

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Section 17.05 - Definitions (continued)

30. *Sign, Electronic Message Display:* an electronic changeable sign capable of displaying text, symbols, figures or graphics, which can be electronically or mechanically changed by remote or automatic means, and incorporates both Electronic Changeable Copy and/or Electronic Graphic Display signs.
 - a. *Sign, Electronic Changeable Copy:* a sign or portion thereof that displays electronically non-pictorial, text information in which each alphanumeric character or symbol is defined by some number of matrix elements using different combinations of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices within the display area. Electronic Changeable Copy includes computer programmable, microprocessor controlled electronic displays. Electronic changeable copy does not include time and temperature signs.
 - b. *Sign, Electronic Graphic Display:* a sign or portion thereof that displays electronic static images, static graphics, or static pictures, with or without text information, defined by some number of matrix elements using different combinations of light emitting diodes (LED's), fiber optics, light bulbs or other illumination devices within the display area where the message change sequence is accomplished immediately or by means of fade, re-pixelization or dissolve modes. Electronic Graphic Display Signs include computer programmable, microprocessor controlled electronic displays.
31. *Sign Structure:* a structure which supports or is capable of supporting a sign, including decorative cover. A sign structure may be a single pole and may or may not be an integral part of a building or structure.
32. *Temporary/Portable Sign:* a sign which is not permanently installed or affixed to any sign structure or building.
33. *Transition:* a visual effect used on an electronic message display to change from one message to another.
34. *Wall Sign:* a sign attached to, painted on or erected against any wall of a building or structure so that the exposed face of the sign is on a plane parallel to the plane of the wall. "Wall sign" also includes any sign erected against, installed on or painted on a penthouse above the roof of a building as long as the wall of the penthouse is on a plane parallel to the wall of the building, and a sign attached to, painted on or erected against a false wall or false roof that does not vary more than thirty degrees from the plane of the adjoining elevation.

17.06 - Permit Not Required

The following signs may be erected without a permit and are not included in the maximum sign area allowed unless otherwise indicated, but must comply with all other requirements of this ordinance:

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17.06 - Permit Not Required (continued)

1. In all districts, one (1) sign shall be allowed on a residential property for each residence. Each sign shall have a maximum area of four (4) square feet, shall be a maximum of six (6) feet high and may not be located within ten (10) feet of an abutter or public right-of-way. Additional signage may be permitted per Section 17.09.2.
2. Wall plaques or markers on properties where a structure has been identified as historic by a local, state or federal agency.
3. In order to maintain public safety, directional or directory signs, no greater than four (4) square feet, which are located outside of setback areas and are not visible from the public right-of-way or abutting properties. Other directional or directory signs are governed by section 17.10.
4. Signs affixed to the interior side of a window so as to be visible from the exterior.
5. In order to maintain public safety, utility signs which identify the location of utility lines, cables, or pipes.
6. Lettering, logos or graphics affixed to products or packaging.
7. In order to maintain public safety, nameplate signs, not to exceed two (2) square feet, showing street addresses, property numbers, names of occupants of the premises, or other identification.
8. Signs installed by governmental bodies.
9. Signs for public safety and/or information, including Electronic Changing Signs (Message Centers).

17.07 - Prohibited Signs in All Districts

1. Rotating and Revolving Signs
2. Flashing Signs
3. Billboards
4. Any changes made to the display of any sign which occurs more often than once in a twenty (20) minute period, with the exception of a time/temperature display.

17.08 - Temporary Signs

In all districts, one (1) temporary sign shall be allowed on each property in accordance with the following standards. For properties that are currently for sale, rent or lease, one additional temporary sign is permitted for the duration that the property maintains that status.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.08 - Temporary Signs (continued)

Temporary signs that comply with the following standards do not require a permit. All signs that do not follow these standards shall be permitted in accordance with Section 17.04.

1. set back not less than ten (10) feet from any public right-of-way;
2. set back not less than twenty (20) feet from any intersection;
3. maintained for a period no longer than thirty (30) days in any consecutive ninety (90) day period whatsoever, and
4. no larger than thirty-two (32) square feet in area.

17.09 - Signs in Residential Zones

Except as provided in subsection 17.06, only the following signs shall be permitted in residential zones:

1. For public safety, Permanent Subdivision Identification Signs: One (1) single or double-faced ground sign per entrance into a development with a maximum of two per development, non-illuminated, in areas set back from vehicle or pedestrian traffic. The signs shall not exceed a total area of 32 square feet per sign, and shall be set back a minimum of twenty (20) feet from any intersection and shall be located on common land or land covered by appropriate easements and maintained by a homeowners association.
2. Home Occupation Signs: One (1) home occupation sign, not to exceed two (2) square feet, in accordance with Section 2.02.1.A.2 of the Zoning Ordinance.
3. Nonresidential Signs: One single or double face sign identifying any nonresidential use permitted in a residential zone. Area may not exceed six (6) square feet and such signs shall not be illuminated, rotate, or flash.

17.10 - Commercial and Industrial Districts

Except as provided for in Section 17.06, only the following signs are permitted in commercial and industrial zones; and no more than two major sign types (ground, roof, wall and projecting) are permitted per parcel.

1. Residential Signs: Residential signs within these zones are subject to the regulations of Section 17.06 and 17.09.
2. Temporary Signs: In addition to signs permitted under Section 17.06, temporary signs for nonresidential uses are permitted, in accordance with the requirements of Section 17.08.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.10 - Commercial and Industrial Districts (continued)

3. Ground Sign: One (1) ground sign is permitted for each site with three-hundred (300) feet of contiguous frontage or less. Where a parcel has more than three-hundred (300) feet of contiguous frontage along the same right-of-way, it may have two ground signs, or the occupant may elect to combine the allowable area of two ground signs into one ground sign with a maximum allowable area of 64, 96, 96 or 150 square feet (corresponding to Table 17-1, below.) All ground signs shall display the property address number. Numbers shall be a minimum of 6 inches in height.

TABLE 17-1

Traffic Speed Allowed	No. of Traffic Lanes	Maximum Area in Sq. Ft.
0-35	2	32
40-50	2	48
0-35	4 or more	48
40-50	4 or more	100

- a) For corner or double frontage lots, one additional ground sign is permitted for each additional street or road from which frontage and access to the site is provided, however, the area of such additional signs shall not exceed fifty (50%) percent of the maximum sign area allowed for the site's principal ground sign(s) and such additional signs may not be located within fifty (50) feet of any intersection.
- b) Ground signs must be set back at least 20 feet from the edge of any public right-of-way except as in such instance as the zoning ordinance shall require a greater setback. The maximum permitted area of any ground sign shall not exceed the figures shown in Table 17-1 for each face of a multi-face sign or for the sole face of a single face ground sign:
- c) No ground sign may exceed in height the distance of any portion of the sign to the center of the adjoining public right-of-way, and the maximum height of any portion of any ground sign or sign structure shall be 40 feet from street grade regardless of location. (See figure 5, Appendix to this section.)
- d) Two or more owners of adjacent separate parcels zoned for commercial use may combine their street or highway frontages and erect one ground sign. No other ground signs shall be permitted on either of the adjacent parcel if the owners make such an election, and the ground sign may not exceed in area or height the maximum allowable by all other provisions of this subchapter.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.10 - Commercial and Industrial Districts (continued)

- e) Where parcels zoned for commercial or industrial use are within one-hundred (100) feet on the same public right-of-way of any parcel zoned for single-family use, ground signs erected and maintained on the commercial or industrial property may not exceed 20 feet in height above the ground at the base of the sign structure or the base of the building, and ground signs must be set back from the public right-of-way the same distance as is required for residential structures on the adjacent residentially zoned property. This provision affects only signs on commercial or industrial property on the same block and on the same right-of-way as the residential property.

4. Wall Signs:

- a) If there is no ground or projecting sign, the maximum area shall be two times the length of the side of the building on which the sign is to be located in square feet. (See figure 6, Appendix to this section.)
- b) If there is a ground sign or projecting sign, the maximum area shall be one times the length of the side of the building on which the sign is to be located in square feet. (See figure 7, Appendix to this section.)
- c) If there is a projecting but no ground sign, the maximum area shall be one times the length of the side of the building on which the sign is to be located in square feet. (See figure 8, Appendix to this section.)
- d) Wall signs consisting of non-illuminated letters up to but not exceeding three inches high are not restricted provided that they are in compliance with the total area designations as outlined in (a), (b) and (c) above.
- e) Any building with an actual or false roof varying not more than 30 degrees from a vertical plane, or any building with a portion or all of a wall built not more than 30 degrees from a vertical plane, shall have such a mansard-type wall or roof considered wall space for the purpose of determining allowable sign placement.
- f) Wall signs may not project more than three feet above the top of a parapet wall or the roof line at the wall, whichever is higher.
- g) For a parcel with or proposing more than one business establishment, each discrete business establishment within the parcel shall be entitled to one wall sign. The maximum area of each shall be two times the length of that portion of the total building length occupied by the individual business on which the sign is to be located in square feet. If a discrete business establishment also has a ground sign the maximum area of their wall sign shall be one times the length of that portion of the total building length occupied by the individual business per Section 17.10.4(b) above.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.10 - Commercial and Industrial Districts (continued)

- h) Businesses having more than one exterior wall shall be entitled to one wall sign per wall sized according to the formula in 4(a), (b) and (c) above.
 - i) The total sign area of a wall sign or awning sign or any combination of a wall sign and awning sign shall not exceed the total wall sign area permitted herein.
5. Directional Signs: One directional sign may be placed on either side of each driveway entrance. The area of each sign may not exceed four square feet.
6. Changeable Copy Signs: Any of the types of signs permitted by this section may be permitted as changeable copy signs.
7. Roof Signs: Roof signs may be used instead of, but not in addition to, wall signs.

Roof signs are subject to the following restrictions:

- a) Roof signs may not project over a public right-of-way or public property.
- b) All roof signs shall be set back a distance of at least three feet from the outside of the building on or over which they are located.
- c) Roof signage may have the same maximum allowable areas as Section 17.10.4.
- d) Height of roof signs:

TABLE 17-2

Building Height	Maximum sign height (including any space required under the sign for clearance) above top of roof or parapet wall, whichever is higher.
0-15'	6'
16-20'	7'
21-25'	8'
26-30'	9'
31-35'	10'
36-40'	11'
41-45'	12'
46-50'	13'

- e) Roof signs shall be limited to identification of a business or industrial concern only.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.10 - Commercial and Industrial Districts (continued)

8. Projecting Signs:

- a) The two types of projecting signs, a vertical projecting sign, where the vertical dimension is greater than the horizontal dimension, and a horizontal projecting sign, where the horizontal dimension exceeds the vertical dimension, are permitted instead of, but not in addition to, ground signs. Any one parcel is permitted to have one projecting sign along any one public right-of-way. The projecting sign may be used instead of, but not in addition to, a ground sign. Where a parcel is allowed two ground signs, the occupant may elect to substitute a projecting sign for one of the ground signs.
- b) The maximum allowable area for a projecting sign shall be:

TABLE 17-3

Traffic Speed Allowed	Number of Traffic Lanes	Area Each Face (Sq. Ft.)
0-35	2	20
40-50	2	48
0-35	4 or more	32
40-50	4 or more	75

- c) Projecting signs must have a minimum clearance between the bottom of the sign and the ground of 10 feet, except signs which project no more than thirty inches, which must have a minimum clearance of eight feet six inches.
- d) Where a sign projects above a traffic area, such as a driveway, the minimum clearance between the bottom of the sign and the ground may be no less than 14 feet.
- e) Projecting signs may not extend more than three feet above the roof line at the wall or the top of a parapet wall, whichever is higher.
- f) Permanent copy of each face of a projecting sign in commercial and industrial zones may include only the name of the occupant and the principal activities, goods, products or services located on the premises.

9. Marquee Signs:

- a) Marquee signs are allowed to be on, under or part of a permanent marquee, but always attached thereto. Only theaters, gymnasiums, auditoriums, athletic facilities, motels, conference centers, and similar uses for which a marquee is a common part of said use are permitted.
- b) A marquee sign may not project more than ten inches beyond the marquee, and never closer than two feet to a curb.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.10 - Commercial and Industrial Districts (continued)

- c) Marquee signs must have a minimum clearance between the bottom of the sign and the ground of not less than eight feet six inches.
 - d) Where the sign is attached above or below or to the face of the marquee, the same maximum allowable area for projecting signs on the same parcel is allowed. The marquee itself shall not contain animation or flashing lights.
 - e) Permanent copy on each face of a marquee sign in commercial and industrial zones may include only the name of the occupant and the principal activities, goods, products or services located on the premises.
10. Sign, Electronic Message Display: Signs permitted in section 17.10.3 & 17.10.4 shall be permitted as electronic message display subject to the following:
- a) Electronic Message Displays shall display static messages for a period of a minimum of 20 minutes;
 - b) Transitions from one static message to the next static message may include the use of frame effects, so long as such effects do not utilize flashing, scrolling or in any manner imitate movement;
 - c) Electronic Message Displays shall have automatic dimming technology which automatically adjusts the sign's brightness levels as specified in Section 11.10 Subdivision Regulations of the Town of Merrimack; and
 - d) The owner/installer of Electronic Message Displays shall certify as part of the application that signs will not exceed the brightness levels specified in Section 11.10 Subdivision Regulations of the Town of Merrimack.
11. Signage Requirements for Alternative Treatment Centers
- a) In addition to the requirements of Section 17.10, Alternative Treatment Centers that have received a Conditional Use Permit and Site Plan approval from the Planning Board shall be subject to the applicable requirements of the NH Health & Human Services Department (DHHS) Administrative Rules (He-C 400, as most recently published or amended by DHHS) pertaining to Advertising Restrictions.

17.11 - Off-Premise Signs

Off premise signs may be erected on parcels of real estate only within the Commercial and Industrial zones. Off premise signs shall be limited to Ground Signs conforming to the regulations provided in Section 17.10.3. A parcel may contain either an On-Premise sign or an Off-Premise sign, but not both, unless it has enough frontage to display two signs (as described in 17.10.3) in which case one sign may be devoted to on-premise advertising and one sign devoted to off-premise advertising.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.12 - Site Plan Review

A building permit for any ground sign at a nonresidential or multi-family site shall be issued only after approval by the Planning Board in accordance with the Site Plan Review regulations of the Town of Merrimack.

17.13 - Area and Dimensional Calculations

1. Area: The area of a sign is considered to be the area, on the largest single face of a sign, within a perimeter which forms the outside shape of a sign. If the sign consists of more than one module (i.e. Section) the total area of all modules shall constitute the sign area. The area of a sign having no such perimeter or border shall be computed by enclosing the entire copy area within the outline of either a parallelogram, triangle, circle or any other easily recognized geometric shape and then computing the area. Where a sign is of a three-dimensional, round or irregular shape, the largest cross section shall be used in a flat projection for the purpose of computing sign area (figures 1-4, Appendix to this title). If a sign is lettered on both sides back to back only one side shall be counted as the total sign area. All appendages or riders are calculated within the area of the sign to which they are appended.
2. Height: The height of a sign is the vertical distance measured from the adjacent undisturbed grade of the sign to the highest point of the sign.

Appendix to Section 17 follows.

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.14 - Appendix

MEASUREMENT OF SIGN AREA -
SINGLE SIGN
(AREA = L X H)

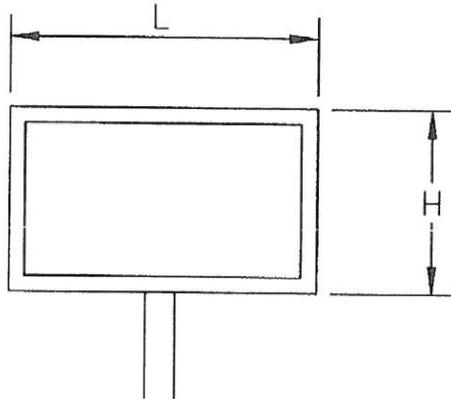


FIG. 1

MEASUREMENT OF SIGN AREA -
MULTIPLE MODULES
(AREA = [A X B] + [C X D] + [E X F])

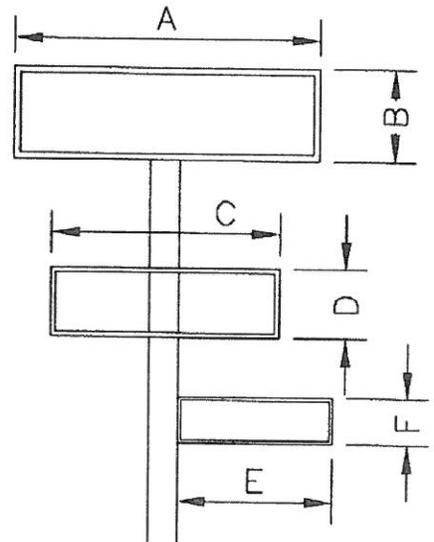


FIG. 2

MEASUREMENT OF SIGN AREA -
3D, ROUND, OR IRREGULAR SHAPED SIGNS
(AREA = USE FORMULA APPROPRIATE FOR SHAPE)

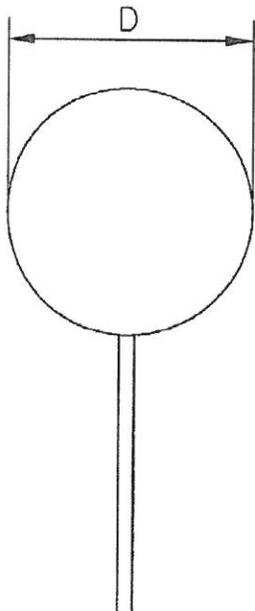


FIG. 3

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.14 Appendix (continued)

MEASUREMENT OF SIGN AREA – IRREGULAR SHAPED SIGN
(AREA = L X H)

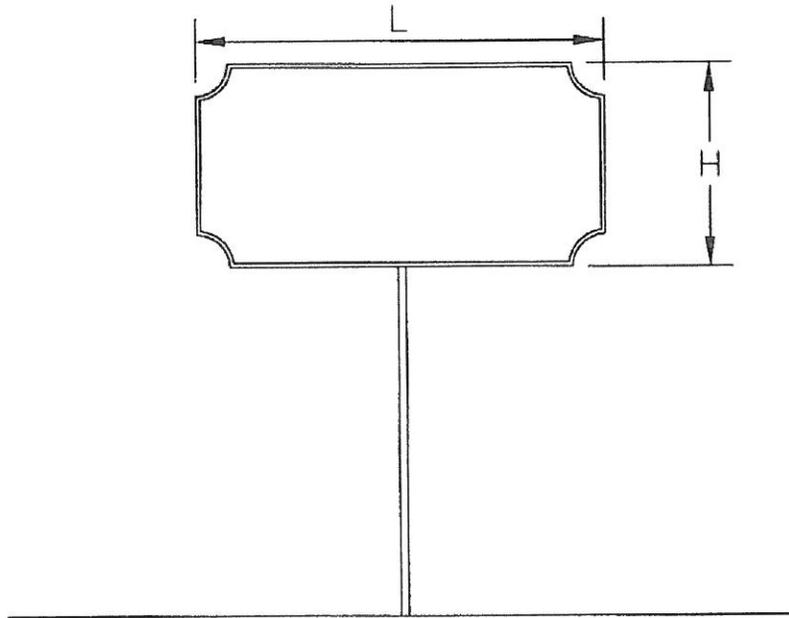


FIG. 4

MAXIMUM HEIGHT OF GROUND SIGN
(MAXIMUM HEIGHT = X; IN NO EVENT GREATER THAN 40 FT.)

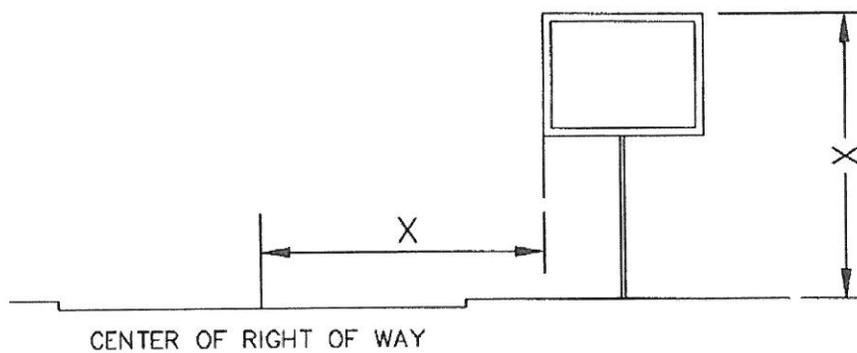


FIG. 5

TOWN OF MERRIMACK ZONING ORDINANCE & BUILDING CODE

17.14 Appendix (continued)

MAXIMUM AREA OF WALL SIGN – NO GROUND OR PROJECTING SIGN
(EXAMPLE: 50' X 2 = 100 S.F ALLOWED)

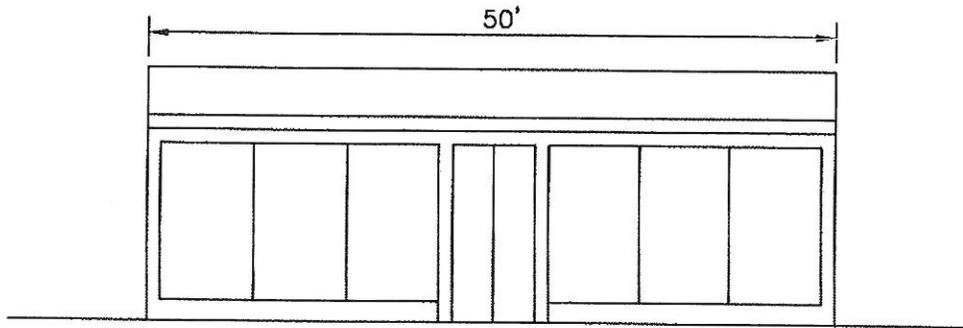


FIG. 6

MAXIMUM AREA OF WALL SIGN –
WITH A GROUND SIGN OR PROJECTING SIGN
(EXAMPLE: 50' X 1 = 50 S.F ALLOWED)

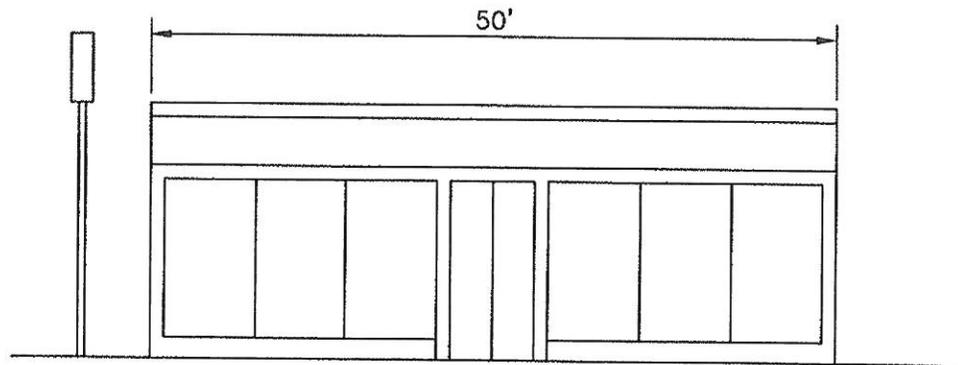


FIG. 7

MAXIMUM AREA OF WALL SIGN –
WITH A PROJECTING SIGN BUT NO GROUND SIGN
(EXAMPLE: 50' X 1 = 50 S.F ALLOWED)

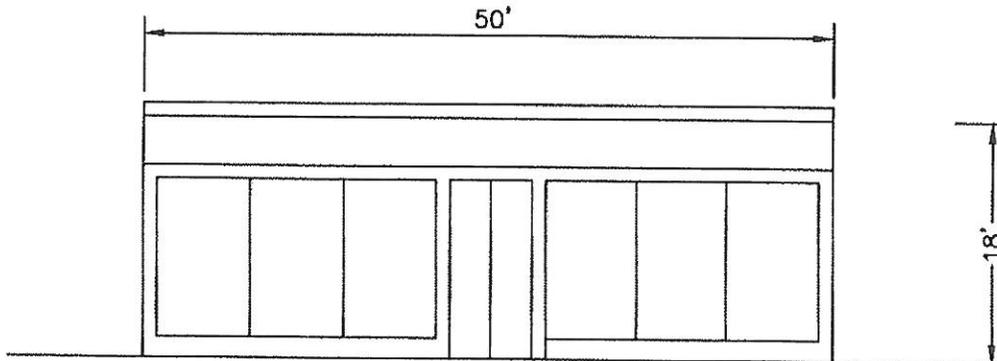


FIG. 8

